



# **NAVAL POSTGRADUATE SCHOOL**

**MONTEREY, CALIFORNIA**

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## **MBA PROFESSIONAL REPORT**

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**Learning from Each Other: Comparative Analysis of  
the Acquisition Process of Lithuania and U.S.**

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**By: Nicola M. Gathright and  
Rima Ambrazeviciene  
June 2006**

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**LEARNING FROM EACH OTHER: COMPARATIVE ANALYSIS OF THE  
ACQUISITION PROCESS OF LITHUANIA AND U.S.**

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**ABSTRACT**

The purpose of this project is to provide a macro-level comparison of the acquisition systems supporting the defense systems of Lithuania and the United States. Due to the broad scope of this project, the researchers focus primarily on the similarities and differences of the two acquisition systems, as well as their strengths and weaknesses. Suggestions are presented for improving or strengthening each system.

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## **LIST OF ACRONYMS AND ABBREVIATIONS**

ACO	Administrative Contracting Officer
ADR	Alternative Dispute Resolution
BCA	Boards of Appeal
CACO	Corporate Administrative Contracting Officer
CFR	Code of Federal Regulations
COTR	Contracting Officer's Technical Representative(s)
DARS	Defense Acquisition Regulations System Contract
DCMA	Defense Contracting and Management Agency
DCAA	Defense Contracting and Audit Agency
DCIS	Defense Criminal Investigative Service
DFARS	DoD FAR supplement
DFAS	Defense Finance and Accounting Service
DoD	Department of Defense
HASC	House Armed Services Committee
HAC	House Appropriations Committee
EVMS	Earned Value Management System
EU	European Union
FAR	Federal Acquisition Regulation
FARA	Federal Acquisition Reform
FASA	Federal Acquisition Services Act
GAO	Government Accountability Office
GPE	Government Point of Entry
GSA	General Services Administration
IG	Inspector General
IFB	Invitation for Bid
MoND	Ministry of National Defense
NASA	National Aeronautics and Space Administration
NATO	North Atlantic Treaty Organization

NDI	Non-developmental Item
NSDD	National Security Decision Directive
NSR	National Security Review
OMB	Office of Management and Budget
OFPP	Office of Federal Procurement Policy
PCO	Procuring Contracting Officer
RDT&E	Research and Development/Test and Evaluation
RFI	Request for Information
RFP	Request for Proposal
SASC	Senate Armed Services Committee
SAC	Senate Appropriation Committee
UN	United Nations
UCC	Uniform Commercial Code



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## **EXECUTIVE SUMMARY**

The purpose of this project is to provide a macro-level comparison of the acquisition systems supporting the defense systems of Lithuania and the United States. The researchers focus primarily on the similarities and differences of the two acquisition systems, as well as their strengths and weaknesses.

Chapter I discuss the purpose of the research, along with the scope and limitations of the study. The methodology utilized in the research was: a comparative, historical, and systematic, logical analysis of the legal framework and literature on the acquisition processes of both countries as well as a site visit to Lithuania's Ministry of National Defense where interviews with key acquisition personnel were obtained.

Chapter II analyzes and compares political, legal, economic and social factors which affect the acquisition systems of Lithuania and the U.S. Both countries' acquisition systems function in democratic legal framework and are similarly affected by their branches of government. However, some very important differences are identified. For instance, when shaping the acquisition policy, U.S. governmental institutions have more discretionary power, while Lithuania operates strictly under the influence of European Union policies on public procurement. Additionally, this chapter addresses the objectives, goals and principles of Lithuanian and the U.S. Defense Acquisition Process. The procurement objectives of both the Lithuanian and U.S. systems are similar. Both place the greatest emphasis on customer satisfaction and rational spending of public funds. However, the non-procurement goals of the respective countries differ entirely. The policies of the U.S. are more focused on procurement equity. Further, the acquisition principles in the two countries are also dissimilar. The U.S. FAR encourages acquisition personnel to apply the principle of entrepreneurialism, on the other end of the spectrum, Lithuania's acquisition personnel can do only what is directly allowed by law.

Chapter III addresses the similarities and differences, as well as the strengths and limitations of each acquisition process. A comparison of the requirement determination, acquisition planning, solicitation, source selection, award, contract management and

contract closeout phases is presented. The research demonstrates that both Lithuania and the U.S. have the fundamentals needed for an adequate acquisition system. Although these elements exist, they are not ideal; consequently there is room for improvement. The analysis illustrates that there are several possible reasons for the differences between the two acquisition processes, including the age and maturity of the individual acquisition systems, the size of the budgets and expenditures, and the complexity and technological advancement of the objects acquired.

Chapter IV provides answers to the research questions. Based on the “best practices” of both countries, insights and recommendations are addressed. Because of the maturity and experience of the U.S. acquisition system, Lithuania is in a position to learn from the money saving initiatives as well the costly mistakes of the U.S. One recommendation presented by the researchers was that Lithuanian Ministry of National Defense (MoND) should initiate the effort to transform the acquisition system from a risk avoidance attitude to an entrepreneurship-based approach. Thus, the Law on Public Procurement and other relevant regulations should be amended to foster innovation, flexibility, and practical risk taking. What can the U.S. learn from Lithuania’s acquisition system? Because the U.S. acquisition is complex, multi-faceted and very mature; (it has been in existence for over 200 years), implementing changes is not always an easy feat. While Lithuania’s acquisition system operates on a much smaller scale than the U.S., their system allows for quicker implementation of changes. Although it has only been fifteen years since the actual birth of the Lithuanian acquisition system the country has made significant progress in achieving what is today a workable system. Thus it might be beneficial for the U.S. to learn from the manner in which reforms are managed and implemented to improve Lithuanian acquisition process. Finally, the chapter also presents suggestions for further research. These included areas that might be of interest for Lithuania’s National Defense System such as the potential implementation of a purchasing card program, as well as e-procurement procedures similar to that of the U.S.

## **I. INTRODUCTION**

### **A. PURPOSE**

The purpose of this project is to provide a macro-level comparison of the acquisition systems supporting the defense systems of Lithuania and the United States. Due to the broad scope of this project, the researchers focus primarily on the similarities and differences of the two acquisitions systems, as well as their strengths and weaknesses. Suggestions are presented for improving or strengthening each system.

### **B. AREAS OF RESEARCH**

(1) to compare the political, legal, economic and social environments that influence the Lithuanian and U.S. acquisition processes, (2) to provide a comparative analysis of main elements of the Lithuanian and U.S. defense acquisition processes, (3) to address the strengths and limitations of the processes, and (4) to provide insight into possible solutions to any problems based on best practices of acquisition for both countries.

### **C. RESEARCH QUESTIONS**

The primary research question for this project is, “Based on the Defense Acquisition Process “best practices” of each country, what can Lithuania and the U.S. learn from each other?” The supporting questions are:

1. What political, legal, economic and social influences shape the defense acquisition processes of Lithuania and U.S.?
2. What are the objectives, goals and principles of each country’s defense acquisition process?
3. What are the similarities and differences, as well as strengths and weakness (limitations) of the Lithuanian and U.S. acquisition process?
4. Based on the findings, what are some suggestions for improvement?

### **D. SCOPE AND LIMITATIONS**

1. This research presents a macro-level analysis of the Lithuanian and U.S. acquisition processes, with particular emphasis on how procurement is organized and conducted in support of national defense.
2. Major acquisition processes are analyzed.

3. Detailed aspects of acquisition functions are considered only when necessary to convey an adequate overall understanding of larger functions being reviewed.
4. The research identifies similarities and differences, as well as strengths and weaknesses, of each nation's defense acquisition process.
5. The project presents lessons and recommendations for improvement based on best practices of both countries.

## **E. METHODOLOGY**

The research for this project is comparative, historical, and systematic, logical analysis. The following research methods are used:

1. Review of available literature in the form of journal articles, books, Government Accountability Office reports and other information sources.
2. Analysis of Lithuania's Law on Public Procurement and the U.S. Federal Acquisition Regulations (FAR), as well as supplemental guidance.
3. A site visit to the Ministry of National Defense in Vilnius, Lithuania.
4. Interviews with officers responsible for the Lithuanian Defense Acquisition System.
5. A comparative analysis of interview feedback and data gathered from documentation.
6. Research on the goals, structure and processes of the current acquisition systems.
7. Lessons from the findings are arrived at through inductive reasoning.

## **F. ORGANIZATION**

The results of the research are presented in four chapters. Chapter I discuss the purpose and methodology of the research, along with the scope and limitations of the study. Chapter II presents a comparative analysis of the political, legal, economic and social environments that influence acquisitions processes in Lithuania and the U.S., and presents the principals and goals of each acquisition system. Chapter III addresses the similarities and differences, as well as the strengths and limitations of each acquisition process. Chapter IV provides insights, recommendations to strengthen the systems and suggestions for further research.

## II. BACKGROUND

### A. INTRODUCTION

Many environments influence the public procurement system, including the political, legal and socio-economic environments (see Figure 1). In order to analyze, compare or make recommendations to improve different acquisition processes, one must first understand and have in-depth knowledge of all the factors (both external and internal) which interact with, and contribute to, the acquisition system.



Figure 1. The Environment of Public Procurement System<sup>1</sup>

This chapter analyzes and compares some of the factors which affect the acquisition systems of Lithuania and the U.S. Specifically, the political, legal, economic and social environments that influence these two systems are addressed. Additionally, the objectives, goals and principles of Lithuanian and the U.S. Defense Acquisition Process are addressed.

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<sup>1</sup> Khi V. Thai, "Public Procurement Re-Examined," *Journal of Public Procurement* 1, no. 1 (2001): 33.

## **B. LITHUANIA**

### **1. Acquisition Objectives/Goals and Principles**

Sound procurement system seems to have two groups of goals: procurement goals and non-procurement goals. The procurement goals normally include quality, timeliness, cost (more than just the price), minimizing business, financial and technical risks, maximizing competition, and maintaining integrity. Non-procurement goals normally include economic goals (preferring domestic or local firms), environment protection or green procurement (promoting the use of recycled goods), social goals (assisting minority and woman-owned business concerns), and international relationship goals.<sup>2</sup>

The Lithuanian acquisition<sup>3</sup> system has both procurement and non-procurement goals. According to Article 3 of the Law on Public Procurement of Lithuania, the main goal of public procurement is to acquire supplies, services or works necessary for the contracting authority or customers, making rational use of the resources allocated for this purpose while following the requirement of the law.<sup>4</sup> The law also requires that competition be maximized (Articles 22, 23, 56 and 73) and performance risks minimized (Articles 38 and others).

After systematic analysis of the Law on Public Procurement, it becomes obvious that non-procurement goals are also present. Social goals while conducting simplified acquisitions include preference for supplies and services procured from companies with 50 percent or more employees who are disabled, prisoners or patients of health care organizations (Article 87). Additionally, the law allows purchasing authorities to encourage environmental protection (Article 37 and others). However, according to the Law on Public Procurement, giving special preference to national producers is not tolerated.

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<sup>2</sup> Thai, 27.

<sup>3</sup> The terms “acquisition” and “public procurement” in this project are used interchangeably and include all contracting actions under the Law on Public Procurement, as well as all defense procurement actions which are exempt from the regulation of the Law on Public Procurement and are regulated by government.

<sup>4</sup> The Seimas of the Republic of Lithuania, “Law on Public Procurement of the Republic of Lithuania,” December 22, 2005, [http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc\\_l?p\\_id=268778&p\\_query=](http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=268778&p_query=)(accessed June 2006).



Lithuanian offset policy may also be considered as an illustration of socio-economic goals in procurement. Lithuania requires offsets for all armaments, ammunition, explosives and other defense related supplies' procurement in excess of five million Litas. The offset obligation must equal 100% of the purchase price and it must be fulfilled within ten years.<sup>5</sup> The offset policy seeks to increase employment opportunities, access new technologies, and attract investments in the country's economy.

In Lithuania, the guiding principles of public procurement are non-discrimination, equality of treatment, transparency, proportionality and mutual recognition.<sup>6</sup> It is critical to mention that the Law on Public Procurement does not encourage "entrepreneurialism." In the United States, procurement allows absence of directions to be interpreted as permitting the purchasing authority, in the best interest of the government, to use innovation and sound business judgment consistent with law and within the limits of their authority.<sup>7</sup> This general principle of U.S. procurement does not apply in Lithuania. In the civil case No 3K-3-597/2004,<sup>8</sup> the Supreme Court of Lithuania has clarified that public procurement is regulated by the imperative legal regulation method, which permits activities only directly allowed by law. Thus Lithuanian public procurement is based on a rigid set of rules and regulations. Moreover, the Resolution of Parliament of Republic of Lithuania on the Approval of National Program on the Fight against Corruption<sup>9</sup> indicates that mandatory detailed regulations and restrictions on contracting personnel's discretionary power are necessary as a means of fighting corruption in public procurement.

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<sup>5</sup> The Government of the Republic of Lithuania, "Regulations on Offset in Armaments, Ammunition, Explosives and Other Defense Related Supplies Procurement," July 15, 2003, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=215406&p\\_query=&p\\_tr2=](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=215406&p_query=&p_tr2=) (accessed June 2006).

<sup>6</sup> The Seimas of the Republic of Lithuania, "Law on Public Procurement of the Republic of Lithuania," December 22, 2005, [http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc\\_l?p\\_id=268778&p\\_query=](http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=268778&p_query=) (accessed June 2006).

<sup>7</sup> "Federal Acquisition Regulation," subpart 1.102 (e), <http://farsite.hill.af.mil/reghtml/regs/far2afmcfars/fardfars/far/Far1toc.htm#TopOfPage> (accessed June 2006).

<sup>8</sup> The Supreme Court, Civil Case No 3K-3-597/2004 (Vilnius, 2004).

<sup>9</sup> The Seimas of Republic of Lithuania, "Resolution on the Approval of National Program on the Fight against Corruption," January 17, 2002, [http://www.stt.lt/lt/files/nacional\\_kova\\_su\\_korupcija.pdf](http://www.stt.lt/lt/files/nacional_kova_su_korupcija.pdf) (accessed June 2006).

## **2. Political and Legal Environment**

### ***a. Type of Government***

Lithuania is a unitary democratic parliamentary republic<sup>10</sup>. The powers of the state are exercised by the legislative, executive and judicial branches and all of them have considerable leverage on the public procurement system of Lithuania. The following section explores the roles of each branch in detail.

### ***b. Branches of Government: Legislative, Executive and Judicial***

LEGISLATIVE BRANCH: The legislative branch of Lithuania consists of one body, the Seimas, which is elected for a four year term on the basis of universal, equal, and direct suffrage by secret ballot. The 141 members of the Seimas represent the People of Lithuania. Every year, the Seimas convenes for two regular sessions. The Seimas is organized into committees that focus on specific areas of responsibility. These committees perform the greater part of the work of drafting legislation.

The main function of the Seimas is to enact laws. Additionally, the Seimas has an oversight responsibilities, as well as authority to form state institutions and appoint and dismiss their chief officers.

The Seimas influences the public procurement system mainly through legislation, budget appropriations and the use of its oversight powers. For instance, in 1996 the Seimas passed the main statute on public procurement called the Law on Public Procurement (last amended in 2005). The public procurement system is also affected by the laws Seimas enacts to regulate competition (antitrust legislation), contract requirements, disputes, breach of contract (Civil Code), environmental protection and other public procurement-related areas.

With the exception of local purchasing authorities' procurements, the money for public procurement are also determined by the Seimas when it considers and approves the draft budget of the state. Moreover, Seimas directly supervises activities of the executive branch and has a directly accountable supervisory body, which is called

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<sup>10</sup> "Constitution of the Republic of Lithuania," October 25, 1992  
[http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=21892](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=21892) (accessed June 2006).

National Audit Office, which audits and supervises the legality of the management and utilization of state property and the realization of the state budget, including procurement issues.

**THE EXECUTIVE BRANCH:** The executive branch is composed of the President of the Republic and Government. The President is the head of state. He represents Lithuania and is elected by popular vote for a five year period. The core functions of the President are to settle basic foreign policy issues and sign international treaties on behalf of the Republic of Lithuania. Additionally, the President nominates the Prime Minister, his cabinet, and a number of other top civil servants. Moreover, he has authority to sign and officially promulgate laws passed by the Seimas.

The government (or cabinet) of the Republic of Lithuania consists of the Prime Minister and Ministers. The Prime Minister is appointed or dismissed by the President with the approval of the Seimas. The Ministers are appointed by the President based on the nomination of the Prime Minister.

The Prime Minister represents the government and guides its activities. Ministers are the heads of their respective ministries and resolve the issues assigned to their competence. The government administers the affairs of state, implements laws and regulations, and coordinates the activities of the ministries and other governmental institutions. It is also responsible for preparing the draft budget and submitting it to the Seimas; for executing the approved state budget, and for reporting on the fulfilment of the budget to the Seimas. In addition, the government has the right to draft bills and submit them to the Seimas for consideration.

The primary government influences on Lithuania's procurement system result from procurement regulations, political and managerial decisions relevant to procurement programs, administrative oversight, and political interference such as appointing the government officials who control procurement issues.

Some of the ministries and other governmental institutions play very important roles in shaping or implementing the procurement system, as well. For example, the Ministry of Economy, in addition to its other functions, draws up proposals

for the government to improve public procurement policy and implementation. The Ministry of Finance organizes treasury operations and accumulates and dispenses treasury money for legitimate use by governmental institutions. It also drafts the fulfillment report on the state budget and submits it to the government. The Ministry of National Defense plays a key role in shaping and implementing the defense procurement policy.

The Public Procurement Office is also worthy of detailed description. It is a government institution which coordinates the activities of procurement and supervises compliance of procurement activities with the Law on Public Procurement and the implementing legislation. The law states that the main functions of Public Procurement Office are to:

1. Draft and adopt, within the scope of its competence, public procurement legislation
2. Supervise compliance of public procurement procedures with legislation and carry out measures to prevent violations of the law
3. Collect, store and analyze information concerning public procurement
4. Analyze and assess the procurement system and draw up proposals for its improvement
5. Organise and conduct training for the contracting authorities' public servants or employees responsible for procurement<sup>11</sup>

In implementing procurement policies and regulations, the executive branch institutions also have some administrative procurement responsibilities, including supplementing statutory procurement procedures through executive orders, adopting the rules for simplified acquisition and resolving claims.

**THE JUDICIAL BRANCH:** The Judicial system of the Republic of Lithuania consists of general jurisdiction and specialised courts. The Supreme Court, the Court of Appeal, district courts, and local courts are courts of general jurisdiction that hear criminal cases and consider disputes arising from civil, labor, family and other legal

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<sup>11</sup> The Seimas of the Republic of Lithuania, "Law on Public Procurement of the Republic of Lithuania," December 22, 2005  
[http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc\\_l?p\\_id=268778&p\\_query=](http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=268778&p_query=) (accessed June 2006).

relations of a private nature. The Supreme Administrative Court and regional administrative courts are specialized courts that hear disputes arising in the sphere of public and internal administration.

The court system has the potential for significant influence on the procurement system. First, general jurisdiction courts of Lithuania hear the complaints from suppliers who believe that the contracting authority has not complied with the requirements of the Law on Public Procurement and has violated their lawful interests. District courts consider those complaints as first instance courts; the final instance court is the Supreme Court. Also, general jurisdiction courts try all legal cases on contract disputes. Second, the Supreme Court is responsible for developing uniform practice in the interpretation and application of statutes and other legal acts, including those on public procurement. For that purpose the Supreme Court periodically issues its “Bulletin of Supreme Court.” Interpretation with regard to the application of statutes and other legal acts found in the decisions, rulings and orders published in this bulletin must be taken into account by courts and other state institutions as well as by other entities when applying these statutes and other legal acts.

*c. Other Political Influences*

In Lithuania, as in any democratic society, there are many private sector interest groups, such as private companies, trade associations, labor unions and professional associations, which are also involved in all aspects of the public procurement system. They influence the system through lobbying the Seimas to pass laws to protect their interests, as well as influencing the implementation of public procurement legislation. The core area of interest groups focus is the decision on the state budget. The mass media are very often used to put pressure on governmental institutions.

Another key issue is that Lithuania is part of European Union (EU), and therefore it is subject to EU regulations. Public procurement is an area of major concern for the EU, because procurement is critical to the establishment and administration of a common single market. Therefore, the EU sets public procurement policy for contract

awards above a certain euro value threshold. All provisions of the Law on Public Procurement of Lithuania must be harmonized with EU legal acts. Any failures are subject to EU sanctions.

In addition, Lithuanian membership in North Atlantic Treaty Organization (NATO) and the United Nations (U.N.) has a significant influence on the defense acquisition processes of the country. Active membership in these organizations requires that the Lithuanian Armed Forces develop certain capabilities. Lithuania must have well-equipped military units prepared to respond to emerging threats and totally interoperable with other NATO, European Union and U.N. forces. Moreover, Lithuanian airspace surveillance, control and defense systems and sea and coast surveillance systems have to be integrated into the NATO system.<sup>12</sup>

#### ***d. Legal Environment***

Lithuania is a state ruled by law. Its legal system is predominantly based on the legal traditions of continental Europe. Therefore, the principal body of law is statutory. Substantive branches of the law are codified in codes, for instance, the Civil Code, Criminal Code, Code of Civil Procedures, Code of Criminal Procedures, Code of Administrative Violations, Labor Code and others. The national legal system of Lithuania, in order of precedence, includes the Constitution of the Republic of Lithuania, Constitutional laws, laws, resolutions of the Seimas, Presidential decrees, resolutions by the government, and acts of other governmental institutions and local municipal authorities.

As noted above, membership of EU has a significant impact on certain areas of Lithuania's national law. Some EU legal acts even apply directly in Lithuania. Others require harmonizing national law with EU policies. For example, Lithuanian legislation on public procurement is strictly harmonized with EU directives. However, some areas of legal relations are subject to regulation only by national law. For instance, defense procurement was for a long time covered purely by EU Member States' national

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<sup>12</sup> The Minister of National Defense of the Republic of Lithuania, "Military Strategy of the Republic of Lithuania," November 17, 2004, <http://www.kam.lt/EasyAdmin/sys/files/military%20strategy.doc> (accessed June 2006).

legislation. Nonetheless, recently European Defence Agency took an initiative to push EU towards creation of an internationally competitive European defense equipment market. European Defence Agency framed a Code of Conduct on Defence Procurement, which will come into force on the 1st of July, 2006. This will establish non-binding intergovernmental regime aimed at encouraging application of competition in defense procurement, on a reciprocal basis between those subscribing to the regime. Member States of EU which decide to subscribe to the regime, will have to harmonize their national law on defence procurement to meet the key principles of this regime.<sup>13</sup>

It is necessary to analyze the legal framework of the acquisition system within the context of the overall Lithuanian legal system overview. The backbone of the public procurement legal framework is the Law on Public Procurement. According to the first Article, the law “establishes the procedures of public procurement, the rights, obligations and responsibility of participants in the procurement procedures, as well as the procedure for the control of public procurement and settling the disputes.”<sup>14</sup> In regards to the exemptions from the law for some contracts (also defined within the law), award procedures for excluded contracts are usually regulated by government. In defense procurement there are several regulations worth noting, including the regulations of September 23, 2004 on Procurement Related to Stationing of Lithuanian Armed Forces Units in Foreign States under International Agreement,<sup>15</sup> the regulations of August 12,

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<sup>13</sup> “The Code of Conduct on Defence Procurement of the EU Member States Participating in the European Defence Agency,” European Defense Agency, <http://www.eda.europa.eu/reference/eda/EDA%20-%20Code%20of%20Conduct%20-%20European%20Defence%20Equipment%20Market.htm> (accessed May 2006).

<sup>14</sup> The Seimas of the Republic of Lithuania, “Law on Public Procurement of the Republic of Lithuania,” December 22, 2005, [http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc\\_l?p\\_id=268778&p\\_query=](http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=268778&p_query=) (accessed June 2006).

<sup>15</sup> The Government of the Republic of Lithuania, “Regulations on Procurement Related to Stationing of Lithuanian Armed Forces Units in Foreign States under International Agreement,” September 23, 2004, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=264329&p\\_query=](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=264329&p_query=) (accessed June 2006).

2003 on Procurement of Armament, Ammunition, Explosives and other Defense Related Supplies,<sup>16</sup> and the regulations of October 19, 2005 on Procurement Related to State Secrets and National Security.<sup>17</sup>

The primary regulations are often supplemented by executive orders which regulate implementation issues in a more detailed manner. For example, the Regulation on Organizing Acquisition in National Defense System (Order No. V-1093) was approved and issued by of the Minister of National Defense on October 6, 2003. It establishes the internal acquisition procedures within the National Defense System and defines the rights, obligations and responsibility of participants in the process. Some other relevant executive orders are discussed in Chapter III.

It is essential to note that legal acts directly or indirectly related to procurement are very unstable. For instance, beginning in 1996, revised versions of the Law on Public Procurement have been passed every three years (1999, 2002, and 2005). The instability of procurement law presents additional challenges to implementing public procurement policies.

### **3. Economic and Social Environment**

Lithuania's economic environment greatly influences its acquisition system. Some of the most influential factors worth mentioning are the conditions of the market economy and the capability of national industry.

Prior to 1990, Lithuania was occupied by the Soviet Union. The economy of the Soviet Union was based on a system of state ownership and centralized planning. After independence, Lithuania went through a process of reengineering its state-commanded economy into a free market economic system. Since then, "Lithuania's economy has

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<sup>16</sup> The Government of the Republic of Lithuania, "Regulations on Procurement of Armament, Ammunition, Explosives and Other Defense Related Supplies," August 12, 2003, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=264417&p\\_query=](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=264417&p_query=) (accessed June 2006).

<sup>17</sup> The Government of the Republic of Lithuania, "Regulations on Procurement Related to State Secrets and National Security," October 19, 2005, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=264151&p\\_query=](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=264151&p_query=) (accessed June 2006).



been based on the right to private ownership, freedom of individual economic activity, and initiative.”<sup>18</sup> Those changes created the proper conditions and need for the development of acquisition system of Lithuania.

The Lithuanian economy is rapidly growing. For example, the actual growth in GDP was 10.5 percent in 2003, 7 percent in 2004, and 7.3 percent in 2005.<sup>19</sup> Such numbers guarantee constant growth of the MoND budget and an increased ability to satisfy the needs of the Armed Forces—while at the same time creating larger workloads for acquisition personnel.

The main industries of Lithuania include “metal-cutting machine tools, electric motors, television sets, refrigerators and freezers, petroleum refining, shipbuilding (small ships), furniture making, textiles, food processing, fertilizers, agricultural machinery, optical equipment, electronic components, computers, amber.”<sup>20</sup> However, Lithuanian companies do not receive any preferences against foreign companies in the acquisition process, so they must compete for the award on an equal basis with foreign companies. Overall, Lithuania’s defense industry is not well developed. Defense systems and many defense related supplies are acquired from foreign producers.

Lithuania’s social environment also has a noteworthy influence on its acquisition system. One of the most important issues is the problem of corruption. According to surveys by Transparency International, in 2005 the Corruption Perception Index<sup>21</sup> in Lithuania was 4.8, where the possible score ranges between ten (squeaky clean) and zero

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<sup>18</sup> “Constitution of the Republic of Lithuania,” October 25, 1992  
[http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?\\_id=21892](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?_id=21892) (accessed June 2006).

<sup>19</sup> Statistics Department of the Republic of Lithuania, “GDP Primarily Estimation,” January 27, 2006,  
<http://www.std.lt/lt/news/view/?id=1358/> (accessed February 2006).

<sup>20</sup> Wikipedia, s.v. “Economy of Lithuania,” [http://en.wikipedia.org/wiki/Economy\\_of\\_Lithuania](http://en.wikipedia.org/wiki/Economy_of_Lithuania)  
(accessed February 2006).

<sup>21</sup> Corruption Perception Index ranks more than 150 countries in terms of perceived levels of corruption, as determined by expert assessment and opinion surveys.

(highly corrupt).<sup>22</sup> Public procurement is one of the areas the public perceives as highly corrupted. Thus acquisition personnel are acting in environment of non-trust and hyper-control.

Another social problem is that small and medium entrepreneurs feel discriminated against. According to the U.S. Department of Commerce, small and medium entrepreneurs “describe lower level bureaucrats as rigid, unhelpful, corrupt, and often abusive. The Lithuanian press is replete with stories of tax inspectors, economic police, and customs officials who make unreasonable demands on small businesses. Many companies agree that the government appears to be biased in favor of big business.”<sup>23</sup> This adds a greater challenge for acquisition personnel since they are under constant social pressure to show more consideration of socio-economic equity issues.

From a social perspective, the most serious problem Lithuania faces are the “brain drain” and emigration. The loss of the skilled work force might have an impact on Lithuania’s growth potential, and indirectly on the nation’s procurement system.

## **C. UNITED STATES**

### **1. Federal Acquisition Objectives/Goals and Principles**

The purpose, vision, and goals of the federal acquisition system can be summarized as follows: to satisfy the customer in terms of quality, timeliness, and cost; maximize use of commercial products and services; use competent contractors; promote competition; minimize administrative operating costs; conduct business with integrity, fairness, and openness; and fulfill public policy objectives. With this in mind, acquisition professionals and participants in the acquisition process should work together as a team and should be afforded the authority to make decisions within their area of responsibilities.<sup>24</sup> This signifies that the acquisition team must work within a system of

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<sup>22</sup> “2005 Transparency International Corruption Perceptions Index,” Pearson Education, <http://www.infoplease.com/ipa/A0781359.html> (accessed December 2005).

<sup>23</sup> “2006 Index of Economic Freedom: Lithuania,” The Heritage Foundation, <http://www.heritage.org/research/features/index/country.cfm?id=Lithuania> (accessed February 2006).

<sup>24</sup> “Federal Acquisition Regulation,” subpart 1.102, <http://farsite.hill.af.mil/reghtml/regs/far2afmcfars/fardfars/far/Far1toc.htm#TopOfPage> (accessed June 2006).

tradeoffs between quality, timeliness, risk, socioeconomic objectives, competition, integrity, and cost. Essentially, they must learn how to do more with less.<sup>25</sup>

In carrying out the objectives and goals of the acquisition system, “entrepreneurialism” is strongly encouraged. This is one of the principles of the U.S. acquisition system which allows acquisition professionals (government members of the acquisition team) to innovate using initiative and sound business judgment when direction is absent. Essentially, they may assume that if a specific practice, policy, procedure or strategy is the best interest of the government and is otherwise consistent with law and within the limits of their authority (FAR 1.102 (e)), then it is permissible.

## **2. Political and Legal Environment**

To retain respect for sausages and laws, one must not watch them in the making. -- Otto Von Bismarck, German statesman

### ***a. Type of Government***

The U.S. form of government is a democracy based on a presidential government and federal system. The nation’s constitution has a built-in system of checks and balances to prevent any one of the three branches of government from gaining too much power. The executive branch is headed by a President chosen by the people through the Electoral College. The legislative branch is the Congress, composed of the House of Representatives and the Senate, both of which are elected by the people. The judicial branch is headed by the Supreme Court with Justices appointed by the President and confirmed by the Senate. Each branch of government has an area of responsibility. The Congress passes laws which are subject to Presidential veto, although a veto can be overridden by the legislature. The Supreme Court interprets the laws consistent with the Constitution and usually with precedents established by the Court itself. Essentially, in many respects they each have a role in creating laws.

A broad overview of each branch’s input to the U.S. defense acquisition system is addressed in Section 2(b) of this chapter.

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<sup>25</sup> Guy Callender and Darin Matthews, “The Economic Context of Government Procurement: New Challenges and New Opportunities,” *Journal of Public Procurement*, 2, no. 2 (2002): 216-235.

***b. Branches of Government: Legislative, Executive and Judicial***

“Federal procurement operates within a democratic framework, under the Constitutional powers and checks and balances of the three branches of government.”<sup>26</sup> When addressing the question, “How does a country’s political and/or legal environment impact the defense acquisition decision process?” the answers can be found in the legislative, executive, and judicial branches of government, all of which have some form of input to the acquisition process.

LEGISLATIVE BRANCH: The legislative branch of the federal government is empowered to make the laws that are then enforced by the executive branch and interpreted by the judicial branch. It consists of two houses of Congress which jointly create and pass legislation, the Senate and the House of Representatives. The legislature at the federal level is composed of popularly elected representatives who propose laws responsive to the needs and interests of their local constituents. One privilege afforded to this branch is the ability to vote to override the president’s veto. Another aspect of checks and balances include legislative powers to impeach public officials, confirm appointments to the executive and judicial branches, and vote on appropriations.<sup>27</sup>

The U.S. legislative branch seems much more productive in putting out legislation affecting acquisition. It influences public procurement systems primarily through laws (by establishing procurement policies and regulations), and through the authorization and appropriation of funds and programs leading to procurements. In addition, with large organization entities, the legislative branch may have a “watchdog” agency such the Government Accountability Office.<sup>28</sup>

The Department of Defense (DoD) and the defense budget are primarily influenced by the following committees: In the Senate, the Senate Armed Services

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<sup>26</sup> K.V. Thai, Public Procurement Re-Examined.” *Journal of Public Procurement* 1, no. 1 (2001): 19.

<sup>27</sup> *Thompson Gale Legal Encyclopedia*, s.v. “Legislature,” [http://www.answers.com/main/ntquery?method=4&dsid=501&dekey=legislature&curtab=501\\_1&linktext=legislature](http://www.answers.com/main/ntquery?method=4&dsid=501&dekey=legislature&curtab=501_1&linktext=legislature) (accessed January 2006).

<sup>28</sup> *Ibid.*

Committee (SASC) and Senate Appropriation Committee (SAC); in the House of Representatives, the House Armed Services Committee (HASC) and House Appropriations Committee (HAC). The extent to which the aforementioned committees affect acquisition is described below.

<b>Subcommittees</b>	<b>Functions / Responsibilities</b>
<b>Senate Armed Services Committee (SASC):</b> Subcommittees dealing with defense issues: Emerging Threats and Capabilities Air-Land Personnel Readiness and Management Support Sea power Strategic	Responsible for a wide variety of policy and budgetary issues that impact the defense acquisition business— aeronautical and space activities associated with the development of weapon systems or military operations; department organizational structures; maintenance and operations of military research and development (R&D); national security aspects of nuclear energy; pay, promotions, and retirement; and strategic and critical materials.
<b>Senate Appropriations Committee (SAC):</b> Subcommittees dealing with defense matters: Defense Foreign Operation Export Financing and Related programs Military Construction	Provides new spending authority for defense programs, operations, and military construction. It also writes legislation defining how the monies it has appropriated can be spent.
<b>House Armed Services Committee (HASC)</b> Subcommittees dealing with defense matters: Military Installations and Facilities Military Personnel Military Procurement Military Readiness Military Research and Development Morale, Welfare and Recreation Merchant Marine	The HASC has wide-ranging jurisdiction, including scientific R&D in support of the armed forces and control of the strategic and critical military material. It also oversees international arms control. Of particular interest to those involved in acquisition are the Military Procurement, Readiness and R&D subcommittees. Through its Subcommittee on Military Procurement, the annual authorization for the procurement of military weapon systems, equipment and nuclear energy is prepared. The Subcommittee on Military Readiness includes authorization for operations and maintenance (O&M), readiness and preparedness. The HASC's Subcommittee on Military R&D has jurisdiction over aeronautical and space activities, military R&D, the DoD generally, nuclear energy, pay, promotions, and the strategic and critical military material.
<b>House Appropriations Committee (HAC)</b> Subcommittees dealing with defense matters: Military Construction Defense	The HAC, provides new spending authority for defense programs, operations, and military construction. Additionally, it writes legislation on how the monies it has appropriated can be spent.

Table 1. Committees with Most Influence on DoD and the Defense Budget<sup>29</sup>

<sup>29</sup> Stephan Markowski, Tony Kausal, ed., *A Comparison of the Defense Acquisition Systems of Australia, Japan, South Korea, Singapore and the United States* (Virginia: Defense Systems Management College Press, 2000), 5-7.

However, “The power of the purse has always resided in Congress: it represents its ultimate weapon in dealing with the executive branch.”<sup>30</sup> For example, DoD is prohibited from spend money without Congressional approval,<sup>31</sup> the President is not authorized to staff the higher reaches of the Pentagon without Senate confirmation, new programs cannot be initiated without Congress approval, and without Congress authorization, DoD officials cannot continue programs.<sup>32</sup>

Congress has always played a role in defense acquisition. Because it is the source of funds, it has the ultimate control over government procurement. Article I of the Constitution lays out Congressional powers, such as the authority to declare war and to raise and support armies. Through its authorization and legislation, Congress enacts major legislation and changes in the acquisition system. The primary focus of these laws is to protect the public interest as well as to ensure fairness through common treatment.<sup>33</sup> Some of these acts have resulted in minor changes to the U.S. acquisition system, while others have had significant impact on the acquisition process. Table 2 shows major acquisition acts which have affected the U.S. acquisition process.

<b>Significant Procurement Legislation (1795-1996)</b>	<b>Results</b>
<b>Purveyor of Supplies Act -1795</b>	Allows the government to buy needed supplies and materials to perform government functions.
<b>Civil Sundry Appropriations Act-1861</b>	Continued the principle of advertised procurements for the next 86 years.
<b>Armed Services Procurement Act of 1947</b>	Continued the sealed bid as the preferred method of procurement, placed procurement rules in one location and gave us the Armed Services Procurement Regulation (ASPR), which was the beginning of today's rulebook, the FAR.
<b>Truth in Negotiation Act of 1962</b>	Required both prime and subcontractors on contracts over \$500,000 to certify the cost data submitted under the solicitation.

<sup>30</sup> Roger R. Trask and Alfred Goldberg, *The Department of Defense 1947-1997: Organization and Leaders*, (Pittsburgh: United States Government Printing, 1997), 15.

<sup>31</sup> Specific details of the U.S. budgetary process are not discussed in this project.

<sup>32</sup> Richard K. Sylvester and Joseph A. Ferrara, “Conflict and Ambiguity: Implementing Evolutionary Acquisition,” *Acquisition Review Quarterly*. (Winter 2003): 12.

<sup>33</sup> R. Marshall Engelbeck, *Acquisition Management* (Virginia: Management Concepts, Inc., 2002), 5.

<b>Significant Procurement Legislation (1795-1996)</b>	<b>Results</b>
<b>Office of Federal Procurement Policy (OFPP) Act of 1983</b>	Established a central office to define overall government contracting and acquisition policy and to oversee the system, among other things.
<b>Competition in Contracting Act (CICA) of 1984</b>	Revised government policy to mandate competition and created an advocate for competition, the Competition Advocate General.
<b>DoD Procurement Reform Act -1985</b>	Defense Procurement Reform Act established a uniform policy for technical data and created a method for resolving disputes.
<b>Defense Procurement Improvement Act of 1986</b>	Provided policy on the costs contractors submitted to the Government for payment and on conflicts of interest involving former DoD officials.
<b>Defense Acquisition Improvement Act of 1986</b>	Among other things, created the Under Secretary of Defense (Acquisition, Technology and Logistics).
<b>DoD Reorganization Act of 1986 (commonly referred to as Goldwater-Nichols Act)</b>	Among other items, revised the Joint Chiefs of Staff role in acquisition and requirements determination.
<b>Ethics Reform Act of 1989</b>	As a result of the “Ill-wind” procurement scandal Congress mandated more stringent ethics laws.
<b>Defense Acquisition Workforce Improvement Act (DAWIA) of 1990</b>	Mandated education, training and professional requirements for the defense acquisition corp.
<b>Federal Acquisition Streamlining Act (FASA) of 1994</b>	Repealed earlier laws on acquisition, such as the Brooks Act provisions on computer acquisitions.
<b>Federal Acquisition Reform Act (FARA) of 1996</b>	Revised procurement laws facilitate more efficient competition; included improving debriefings, limiting need for cost/pricing data and emphasizing price versus cost negotiations, among other items.
<b>Clinger-Cohen Act of 1996</b>	Included changes to competition practices, commercial item acquisition, and included fundamental changes in how information technology equipment is purchased.

Table 2. Major Acquisition Acts<sup>34</sup>

There is also an accountability role for the Congress. To conduct oversight of the bureaucracy, it demands that numerous reports be submitted annually. These reports are usually required during the appropriations and authorizations processes. The range of the reports is very broad. For example, Title 10 of the U.S. Code requires

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<sup>34</sup> Stephan Markowski, Tony Kausal, ed., *A Comparison of the Defense Acquisition Systems of Australia, Japan, South Korea, Singapore and the United States* (Virginia: Defense Systems Management College Press, 2000), 5-10.

over 460 recurring reports as well as about 200 which are required by individual appropriations or authorization acts. Additionally, there are hundreds of one time reports which must be submitted.<sup>35</sup>

The Government Accountability Office (GAO) is considered the investigative arm of Congress. It works for the legislative branch by investigating matters relating to the receipt, disbursement and application of public funds along with evaluating the performance of government programs, is also an important player in the U.S. acquisition process. It is an independent, nonpartisan agency headed by the Comptroller General of the United States, who is appointed by the President and confirmed by the Senate. GAO has been the “watchdog” of Congress as well as a key player involved in overseeing the acquisition system for more than 75 years.<sup>36</sup>

GAO is the congressional investigative agency that examines the use of public funds, evaluates federal programs and activities, and provides analyses, options, recommendations, and other assistance to help the Congress make effective oversight, policy, and funding decisions. Thus, the GAO may be frequently called upon to review programs or issues of concern. It works for both Congress and the American people supporting congressional oversight by evaluating how well government policies and programs are working, auditing agency operations to determine whether federal funds are being spent efficiently, effectively, and appropriately, investigating allegations of illegal and improper activities, and issuing legal decisions and opinions.<sup>37</sup>

The scope of GAO work and reports are extensive. On their website one finds any number of reviews, ranging from Acquisition Planning/Reformation to International Cooperative programs, such as Medium Extended Air Defense System (MEADS). Some of its functions are as follows: It studies how the federal government

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<sup>35</sup> Richard K. Sylvester and Joseph A. Ferrara, “Conflict and Ambiguity: Implementing Evolutionary Acquisition,” *Acquisition Review Quarterly*. (Winter 2003): 13.

<sup>36</sup> Stephan Markowski, Tony Kausal, ed., *A Comparison of the Defense Acquisition Systems of Australia, Japan, South Korea, Singapore and the United States* (Virginia: Defense Systems Management College Press, 2000), 5-12.

<sup>37</sup> “What is GAO?,” Government Accountability Office, <http://www.gao.gov/about/what.html> (accessed March 2006).



spends taxpayer dollars, advises Congress and the heads of executive agencies (such as the Environmental Protection Agency, Department of Defense, and Health and Human Services) about ways to make government more effective and responsive. The GAO evaluates federal programs, audits federal expenditures, and issues legal opinions. When GAO reports its findings to Congress, it recommends actions. “Its work leads to laws and acts that improve government operations, and save billions of dollars.”<sup>38</sup>

The GAO has a significant role in the procurement and contracting process. Another example is the role it plays in the bid protest system for contractors who may wish to challenge an agency’s award. Specifically, it is the bid protest authority for any contractors who may wish to challenge an agency’s award. According to Federal Acquisition Regulation part 33.102(e), “an interested party wishing to protest is encouraged to seek resolution within the agency before filing a protest with the GAO, but may protest to the GAO in accordance with GAO regulations” (4 Code of Federal Regulation (CFR) Part 21). However, FAR part 33.102(f) cautions that, “No person may file a protest at GAO for a procurement integrity violation unless that person reported to the contracting officer the information constituting evidence of the violation within 14 days after the person first discovered the possible violation.” The GAO also provides assistance to other government agencies in interpreting the laws governing the expenditure of public funds and adjudicating claims involving the federal government.

EXECUTIVE BRANCH: The executive branch is the branch of the U.S. government that is composed of the president and all the individual agencies and departments that report to the president. This branch is responsible for administering and enforcing the laws that Congress passes.<sup>39</sup>

There are times when the President has taken a vested interest in defense acquisition problems and issues. It is at such times that he may direct the implementation of specific changes or reforms. Some examples include: Executive Order (E.O.) 12353, in 1982, which directed procurement reforms and also created a Federal Acquisition

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<sup>38</sup> “What is GAO?”

<sup>39</sup> *Wikipedia*, s.v. “Executive (government),” [http://en.wikipedia.org/wiki/Executive\\_%28government%29](http://en.wikipedia.org/wiki/Executive_%28government%29) (accessed February 2006).

Regulation (FAR); National Security Decision Directive (NSDD) 219, in 1986, which directed implementation of the Packard Commission's recommendation on management of defense acquisition; and National Security Review (NSR) 11, in 1989, which directed a review of the defense acquisition business and a report outlining the changes as a result of the review.<sup>40</sup>

The executive branch and its associated agencies have been given the authority to regulate the federal acquisition regulation system.<sup>41</sup> More specifically, the system of regulations that govern acquisition by contract for supplies and services needed by federal agencies is referred to as the Federal Acquisition Regulation System. The system consists of the Federal Acquisition Regulation (FAR). The FAR is prepared, issued, and maintained jointly by the Secretary of Defense, the Administrator of the General Services and the NASA Administrator. Supplementary regulations are issued by individual agencies of the Executive Branch. These agencies are vital and instrumental to the acquisition process. They are instrumental in issuing supplements to regulations as well as developing unique rules and practices to the acquisition process. One such example is the DoD FAR supplement (DFARS).

DFARS Subpart 201.301(a) (1), Agency Acquisition Regulations, states that DoD implementation and supplementation of the FAR is issued in the DFARS under authorization and subject to the authority, direction, and control of the Secretary of Defense. It goes on to list the contents of the DFARS as follows:

- Requirements of law;
- DoD-wide policies; Delegations of FAR authorities;
- Deviations from FAR requirements; and
- Policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors.

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<sup>40</sup> Stephan Markowski, Tony Kausal, ed., *A Comparison of the Defense Acquisition Systems of Australia, Japan, South Korea, Singapore and the United States* (Virginia: Defense Systems Management College Press, 2000), 5-5.

<sup>41</sup> R. Marshall Engelbeck, *Acquisition Management* (Virginia: Management Concepts, Inc., 2002), 7.

Two important agencies which provide government oversight for the acquisition system are the DoD Inspector General (IG) and the Defense Contract Audit Agency (DCAA). The IG serves as an independent official for conducting audits and investigations relating to programs and operations of the department. The IG office is also responsible for identifying problems, deficiencies, fraud and abuse in the management of programs and identifying the need for correction actions. The DCAA performs contract audits and provides accounting and financial advice to DoD procurement organizations and others, such as NASA. These services are provided in connection with negotiation, administration, and settlement of contracts and subcontracts.<sup>42</sup>

The Office of Management and Budget (OMB) and the Office of Federal Procurement Policy (OFPP) are also vital to offices of the executive branch. OMB's predominant mission is to assist the President in overseeing the preparation of the federal budget and to supervise its administration in executive branch agencies. In addition, under the OMB is the OFPP, whose duties include providing overall direction of government-wide procurement policies, regulations, procedures, and financial management for executive agencies and to promote economy, efficiency, and effectiveness in the procurement of property and services by the executive branch of the federal government.<sup>43</sup>

In 1983, the Office of Federal Procurement Policy (OFPP) Act established a central office to define overall government contracting and acquisition policy and to oversee the system, among other things. The Administrator for Federal Procurement Policy is appointed by the President, with the advice and consent of the Senate. This office promulgates policies by methods that include issuing OFPP Policy Letters or forwarding OMB circulars. An example is a recent policy memorandum of 18 April

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<sup>42</sup> Engelbeck, 5-25.

<sup>43</sup> *U.S. House of Representatives*, Office of the Law Revision Counsel, "U.S. CODE: Title 41, 404. Establishment of Office of Federal Procurement Policy; appointment of Administrator," January 19, 2004, <http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t41t42+182+0++%28Office%20of%20Federal%20Procurement%20Policy%29%20%20AND%20%28%2841%29%20ADJ%20USC%29%3ACITE%20AND%20%28USC%20w%2F10%20%28404%29%29%3ACITE%20%20%20%20%20%20%20%20%20%20> (accessed June 2006).

2005, entitled “Office of Federal Procurement Policy Issues Policy Letter on Federal Acquisition Workforce.” This policy letter emphasizes the importance of the federal acquisition workforce and creates new training and development requirements for civilian agencies. Another example is OMB circular NO. A-76. The Office of Federal Procurement states the purpose of Circular-No. A-76 is to establish federal policy for the competition of commercial activities.<sup>44</sup> In essence, it pertains to competitive sourcing, a major initiative of the President's Management Agenda. Competitive sourcing is a process for determining the most effective and efficient way for government employees to perform certain types of work functions. A revision to the Circular provides a procedure for determining whether commercial activities should be performed under contract with competitive sourcing or in-house using government facilities and personnel. This amendment requires that all commercial activities performed by government personnel be subjected to the forces of competition.<sup>45</sup>

JUDICIAL BRANCH: The judicial branch consists of the Supreme Court and other federal courts. It is established by Article III of the United States Constitution as one of three separate distinct branches of the federal government. Under the doctrine of the separation of powers, the judiciary is the branch of government primarily responsible for interpreting the law. More specifically, it is the court systems of local, state, and federal governments, responsible for the interpreting the laws passed by the legislative branch and enforced by the executive branch.<sup>46</sup> Also the judicial branch influence acquisition system by trying legal cases which involves the federal government, such as contract disputes. The decisions arrived from these cases often time become the basis of federal procurement regulations.<sup>47</sup>

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<sup>44</sup> Executive Office of The President, Office of Management and Budget,: Office of Federal Procurement Policy, “Performance of Commercial Activities,” August 4, 1983, <http://www.dla.mil/j-3/a-76-OMBCircularA-76.html> (accessed June 2006).

<sup>45</sup> Ibid.

<sup>46</sup> *Wikipedia*, s.v. “Judiciary,” [http://en.wikipedia.org/wiki/Judicial\\_branch](http://en.wikipedia.org/wiki/Judicial_branch) (accessed February 2006).

<sup>47</sup> Ibid.

### *c. Other Political Influences*

The public interacts in many ways with the acquisition process. They are part of the process of establishing the guiding rules and principles of the federal acquisition system. Whenever a new rule or policy is initiated, it is presented to the public for feedback. Anyone can participate; “Joe Blow” can make comments (negative or positive) about a proposed statute. In the context of a government organization dealing with the public, and with elected officials, codifying good procurement practice into rules has an advantage. “Making decisions in accordance with specific rules . . . helps repel attempts by politicians to reverse . . . decisions on behalf of irate . . . constituents.”<sup>48</sup> It is safe to say that elected officials, the general public, as well as vendors, all have a stake in the making and reforming of acquisition practices.

Deputy Defense Secretary Gordon England took the offensive earlier in the beginning of 2006 by appointing a special panel to find ways to streamline the DoD’s procurement process. Then in September the Senate Armed Services Committee began the first in a series of acquisition reform hearings, and the House Armed Services Committee seems to be joining the fray.<sup>49</sup> This is a great example of how the public interacts with the acquisition process.

Another forum for public interaction with the acquisition process is the Department of Commerce, whose historic mission is “to foster, promote, and develop the foreign and domestic commerce” of the United States. This has evolved, as a result of legislative and administrative additions, to encompass broadly the responsibility to foster, serve, and promote the nation’s economic development and technological advancement. The Department fulfills this mission by:

- “Participating with other government agencies in the creation of national policy, through the President’s Cabinet and its subdivisions.
- Promoting and assisting international trade

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<sup>48</sup> Eugene Bardach and Robert A. Kagan, *Going by the Book* (Philadelphia: Temple University Press, 1982), 36.

<sup>49</sup> “Congressional Oversight – The Defense Procurement Puzzle,” The Project on Government Oversight (POGO) Blog, [http://pogoblog.typepad.com/pogo/congressional\\_oversight/index.html](http://pogoblog.typepad.com/pogo/congressional_oversight/index.html) (accessed February 2006).

- Strengthening the international economic position of the United States
- Promoting progressive domestic business policies and growth
- Improving comprehension and uses of the physical environment and its oceanic life
- Ensuring effective use and growth of the Nation's scientific and technical resources
- Acquiring, analyzing, and disseminating information regarding the nation and the economy to help achieve increased social and economic benefit
- Assisting states, communities, and individuals with economic progress.”<sup>50</sup>

***d. Legal Environment***

In general, the legal framework for the U.S. federal procurement system is complex as well as multifaceted. It is riddled with hard-to-read laws, regulations, and procedures. Acquisition factors, including military needs, are often influenced by public policy objectives, such as encouraging small businesses, woman-owned businesses, and small and disadvantaged businesses.

The legal environment refers to a broad legal framework that governs all business activities including research and development, manufacturing, finance, marketing, personnel and contract. The U.S. acquisition system is guided by the FAR and implementing regulations, which establish uniform policies and procedures for acquiring systems, supplies and services.

The FAR is not just a document; it is a system. More specifically: “The Federal Acquisition Regulations System consists of the Federal Acquisition Regulation (FAR), which is the primary document, and agency acquisition regulations that implement or supplement the FAR.”<sup>51</sup>

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<sup>50</sup> “Mission and Organization of the Department of Commerce,” Department of Commerce, <http://204.193.232.34/cgi-bin/doit.cgi?204:112:ca6ff65e72b6f38e4fe42ea2ba9cf9358ad6df26eae063a68a6e8f420a9ac897:245> (accessed February 2006).

<sup>51</sup> “Federal Acquisition Regulation,” subpart 1.102(a), <http://farsite.hill.af.mil/reghtml/regs/far2afmcfars/fardfars/far/Far1toc.htm#TopOfPage> (accessed June 2006).

In addition to the FAR, the Defense Acquisition Regulations System (DARS) develops and maintains acquisition rules and guidance to facilitate the acquisition workforce as they acquire the goods and services DoD requires for achieving success as war fighters. DFARS office also creates and maintains the FAR and the Defense Federal Acquisition Regulation Supplement (DFARS).

Finally, there are established administrative law organizations which play a role in the federal acquisition system. Offices such as the Contract Boards of Appeal (BCA) and GAO both facilitate contract disputes. The BCA is involved with disputes that occur while under contract, while the GAO makes decisions involving protests regarding awarding or non-award of contracts.<sup>52</sup>

### **3. Economic and Social Environment**

In addition to politics, there are social and economic factors which also impact the acquisition process. Environmental factors include but are not limited to economical and social factors. As Engelbeck notes, “these social and economic policies addressed in the FAR are immense and complex.”<sup>53</sup> Additionally, FAR 1.102, Statement of Guiding Principles for the Federal Acquisition System, and the policies and procedures in the FAR are integral to the framework of the U.S. federal acquisition system (discussed in greater detail below). The federal acquisition system is influenced by both economic and social forces. Congress initiates economic and social policies through legislation.

There are a host of policies regarding the two entities addressed in the FAR. The U.S. has imposed social policies, such as placing a reasonable proportion of government acquisition with woman- or minority-owned small business. According to Engelbeck, “the social and economic programs that have the greatest impact on the acquisition process are small business, small and disadvantaged business, equal opportunity, affirmative action programs and wage protection given to construction and service contract labor.”<sup>54</sup>

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<sup>52</sup> Jose J. Fernandez, “A Comparison of the Defense Acquisition Systems of Canada and the United States of America,” (MBA Thesis, Naval Postgraduate School, 1999), 28.

<sup>53</sup> R. Marshall Engelbeck, *Acquisition Management* (Virginia: Management Concepts, Inc., 2002), 26.

<sup>54</sup> *Ibid.*, 26-27.

Another force which may impact federal procurement professionals is the government's use of large outlays in order to stabilize or help in the development or economy. An example of this is the preference of local or national firms over other countries. The Buy America Act of 1933 states that all federal construction contracts that are performed within the U.S. must use domestic construction material. The purpose of this act was also to increase American made purchases, protect American jobs, protect American manufacturing industry, protect American investments, and protect legal discrimination. However, during the past year Congress amended the Buy American Act in an effort to increase the requirement for American-made content, to tighten the waiver provisions and for other purposes. The amendment was introduced by U.S. Senator Russ Feingold (D- California) in February 2005 and was passed by the Senate and House of Representative. The Act is now called the Buy American Improvement Act of 2005.

With such constraints, acquisition professionals are sometimes forced to balance these forces and the public officials who are behind them. Thai best illustrates this dilemma with the following statement: "Policy makers – be it legislators, chief executives, department heads and procurement executives—are facing difficult decisions when they assess tradeoffs between possible conflicting procurement goals and policies, including tradeoffs between cost and quality, timeliness, risk, economic goals, social goals and competition."<sup>55</sup> Still, all participants in the federal acquisition system are responsible for ensuring that the best value product or service to the customer is being procured.<sup>56</sup>

The defense industry of the United States can be characterized as robust. The U.S. dominates the international arms market, exporting billions of dollars worth of weaponry to states around the world. Its share of total world military expenditures per year has been about 36 percent (excluding the spending following September 11, 2001).

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<sup>55</sup> Khi V. Thai, "Public Procurement Re-Examined," *Journal of Public Procurement* 1, no. 1 (2001): 43.

<sup>56</sup> "Federal Acquisition Regulation," subpart 1.102-1(b), <http://farsite.hill.af.mil/reghtml/regs/far2afmcfars/fardfars/far/Far1toc.htm#TopOfPage> (accessed June 2006).



World military expenditures topped \$839 billion in 2001, up from \$798 billion in 2000. In addition, U.S. weapons and materials sales have helped to outfit non-democratic regimes and to maintain the war efforts of our allies.<sup>57</sup>

Despite a seemingly strong economy that can build and maintain a top notch armed force, the public questions the government's ability to operate effectively and efficiently. This may be due to an increasing budget deficit, tax burden and reports of problems with government purchases.<sup>58</sup>

Because of the public's rather negative perception of federal spending, every effort is made to ensure that competition and transparency are incorporated in all contract formation. Swartz asserts that “. . . although the law of government contract formation departs dramatically from the norms of private contracting, the overwhelming thrust of the departure is in the direction of imposing extra duties on the government. These tend to be duties that afford would-be government contractors the benefit of a transparent and competitive procurement regime, and thus do not resemble the kind of ‘exceptionalism’ (which enhances the power or reduces the liabilities of the government with respect to its private contracting partners) that the author has defined as a centrality of U.S. Military Procurement.”<sup>59</sup>

#### **D. SUMMARY**

The procurement goals of both the Lithuanian and U.S. systems are very similar. Both place the greatest emphasis on customer satisfaction and rational spending of public funds. However, the non-procurement goals of the respective countries differ entirely. The acquisition system policies of the U.S. are much more focused on procurement equity, such as giving preference to small business and woman-owned business whenever possible, as well as on a preference for domestic firms. On the contrary, Lithuanian procurement equity policies are not as forceful. Additionally, giving preferences to

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<sup>57</sup> Fast Facts, s.v. “Military Expenditures,” [http://www.fas.org/asmp/fast\\_facts.htm](http://www.fas.org/asmp/fast_facts.htm) (accessed March 2006).

<sup>58</sup> R. Marshall Engelbeck, *Acquisition Management* (Virginia: Management Concepts, Inc., 2002), 11.

<sup>59</sup> Joshua I. Schwartz, “The Centrality of Military Procurement: Explaining the Exceptionalist Charter of United States Federal Public Procurement Law,” Social Science Research Network, (2004), [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=607186](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=607186) (accessed June 2006).

national suppliers is against the law in Lithuania, due to the fact that there is a single market in the European Union and all companies have the same rights to compete for a contract award. However, in Lithuania there is a requirement for offsets when procuring all armaments, ammunition, explosives and other defense related supplies' in excess of five million Litas. While in the U.S. there is no specific offset policy.

The acquisition principles in the two countries are rather dissimilar. The U.S. FAR encourages acquisition personnel to apply the principle of entrepreneurialism (being innovative and creative and thinking outside the box), while in Lithuania acquisition personnel can do only what is directly allowed by law.

The political and legal systems of Lithuania and the U.S. have very similar influences on their respective acquisition systems. Both countries' acquisition systems function in democratic legal framework and are affected by mechanisms for checks and balances. However, some very important differences cannot be ignored. For instance, when shaping the acquisition policy, U.S. governmental institutions have much more discretionary power, while Lithuania operates strictly under the influence of European Union policies on public procurement.

The most significant differences between the two countries' acquisition environments lie within the socio-economic realm. For example, the U.S. defense industry is one of the most modern and robust industries in the world. On the other hand, Lithuania's defense industry is not well developed. Additionally, the perception of corruption is much higher in Lithuania than in the U.S. That is not to say that there is no corruption in the U.S. acquisition system, but only that, compared with the Lithuanian population, the American people have a stronger belief in the integrity of the system. According to the 2005 survey by Transparency International, the corruption perception index of the U.S. is 7.6, much closer to "squeaky clean" than Lithuania's score of 4.8.<sup>60</sup>

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<sup>60</sup> "2005 Transparency International Corruption Perceptions Index," Pearson Education, <http://www.infoplease.com/ipa/A0781359.html> (accessed December 2005).

In conclusion, there are some significant environmental differences, as well as differences of acquisition goals and principles, which must be addressed when making suggestions to improve or reform the acquisition systems of Lithuania or the U.S. These factors cannot be ignored because they are integral to each system; ignoring them might produce negative secondary or tertiary consequences or invalid results.

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### III. COMPARATIVE ANALYSIS OF THE LITHUANIAN AND U.S. ACQUISITION PROCESSES

#### A. INTRODUCTION

This chapter illustrates and compares the acquisition processes of Lithuania and the U.S. It focuses on the following questions: Who are the players? How does each system operate? What are the similarities and differences between the processes? What are some of the major issues within each of the processes?

Although the acquisition processes follow the steps depicted in the flow chart below (Figure 2), to establish a common framework for comparing Lithuania and U.S. acquisition processes, these individual steps are combined into three major phases: 1) requirement determination/acquisition planning phase, 2) solicitation/source selection/contract award phase, and 3) contract management/closeout phase.

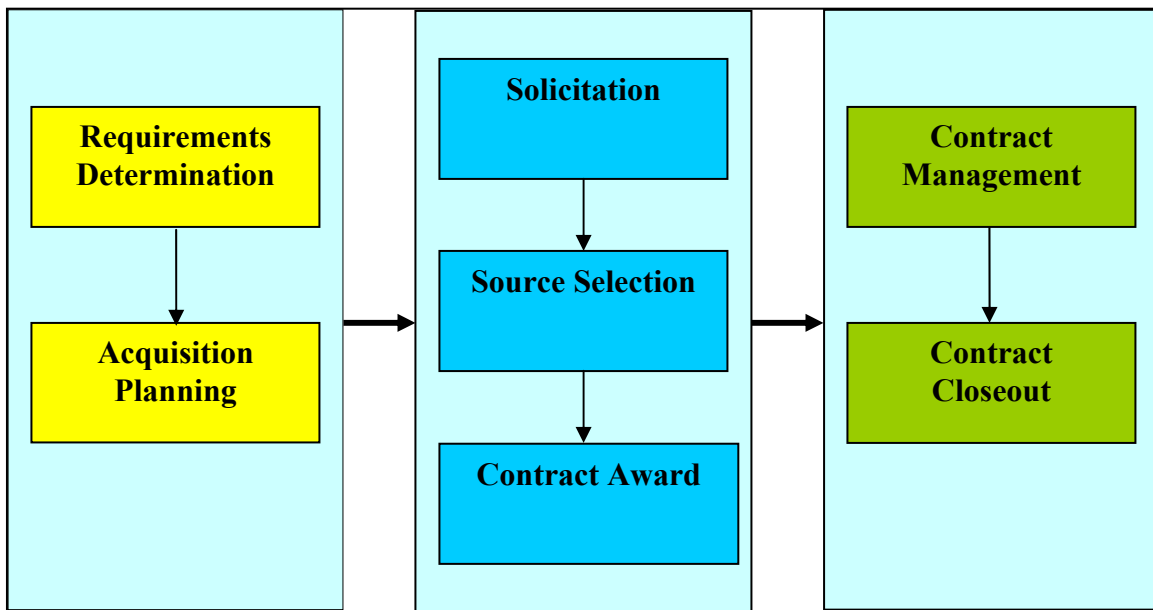


Figure 2. The Acquisition Process

## **B. REQUIREMENT DETERMINATION/ACQUISITION PLANNING**

### **1. Lithuania**

#### ***a. Requirement Determination***

In Lithuania the requirement determination phase is understood as a process of identification of needs, determination of operational requirements and preparation of technical specifications. This phase is critically important for the success of the whole acquisition process. As Gansler notes, “If you ask for a wrong thing, you will get it.”<sup>61</sup>

The requirement determination for large-value equipment and weaponry is a “top-down” process. The MoND departments (such as the Defense Policy Planning Department, the Resource Planning Department and the Finance and Budget Department), with guidance from the National Security Strategy, the Military Strategy, and MoND mission statement, prepare the following:

- National Defense System Developmental Program (approved by the Seimas)
- Minister of National Defense guidelines
- Negotiation position on NATO Task Force documents.

Those documents identify the needs (capability gaps) of the Lithuanian Armed Forces. Using guidance provided by these documents, the operational forces (Land Force, Air Force, Naval Force, and Logistics) outline operational requirements and finalize them into operational requirements documents and/or investment projects. Investment projects are submitted for consideration and approval by MoND and then by government. After appropriation of funding, the contracting authority assigns an official or commission to prepare technical specifications. Guided by operational requirement documents and/or investment projects, assigned personnel draft technical specifications and publicize them on the internet for comments from suppliers. Based on feedback,

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<sup>61</sup> Jacques S. Gansler, “A Vision of the Government as a World-Class Buyer: Major Procurement Issues for the Coming Decade,” January 2002, <http://www.businessofgovernment.org/pdfs/GanslerReport.pdf> (accessed June 2006).

technical specifications are then corrected and submitted for consideration and approval to General Staff or Undersecretary of MoND.<sup>62</sup>

The requirement determination for other than large-value equipment and weaponry utilizes a “bottom-up” process. It begins in the operational forces and their subdivisions. The needs for short-term assets (e.g., office supplies) are initially identified by subdivisions that are also responsible for the preparation of technical specifications. The need for long-term assets must be incorporated into investment projects, which are approved by MoND. The need for consumables is determined and technical specifications are prepared by the Logistics Command of Lithuanian Armed Forces.

National Defense System personnel interviewed for this research acknowledge many challenges in the requirements determination process. They claim that the procedures are not very clearly structured or defined; steps in the process are sometimes inconsistent. Interviewed personnel also complain that the market research and analysis of alternatives is often done superficially, if at all. Therefore, requirements and initial budget estimates are imprecise and inaccurate. In the investment project approval stage, authorities have varying perspectives on priorities and lack clear project evaluation criteria. Also, very often approval is given under pressure of urgency with negative influence on quality.

The National Defense System personnel interviewed also indicate several problems with the preparation of technical specification process. One is the lack of competent technical personnel to prepare high quality technical specifications. Frequently this is a part-time duty assigned in addition to regular full-time job responsibilities. Thus technical specification is not a top priority in the technical personnel schedule, which causes delays and low-quality work. Another problem they bring up is that design description is the dominant type of specification, which limits the ability of industry to provide better solutions, offer state-of-the-art technology and help save on costs.

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<sup>62</sup> Procedures require publication on the internet and approval of technical specifications by General Staff or Undersecretary of MoND when supplies, services or works are acquired in centralized way (referred as centralized procurement). Otherwise, technical specifications are approved by the head of contracting authority.

### ***b. Acquisition Planning***

In the U.S., acquisition planning is understood as “the process by which the efforts of all personnel responsible for an acquisition are coordinated and integrated through a comprehensive plan for fulfilling the agency need in a timely manner and at a reasonable cost.”<sup>63</sup> The prepared acquisition plan must provide the overall strategy for accomplishing and managing acquisition. However, in the Lithuanian acquisition process the term “acquisition planning” is often tied to the budgeting process. Furthermore, the term “procurement strategy” is considered to be a decision by contracting authority on the type of award procedures to follow (specifically, whether the contract should be awarded following the Law on Public procurement or is excluded from the Law and should be awarded according to other procurement regulations, and if so which source selection procedure—open, negotiated or other—should be utilized).<sup>64</sup>

The procedures for preparing a written overall strategy for accomplishing and managing acquisition are still evolving. A subdivision within MoND’s Procurement Department responsible for coordinating the preparation of written overall acquisition strategy for high-value acquisition projects was established only this year. So far, even complex systems are acquired without a well-developed acquisition plan that includes all contracting, budgeting and funding, test and evaluation, logistics, contract administration and other considerations.

## **2. United States**

### ***a. Requirement Determination***

The requirement determination process is comprised of many different steps (see Figure 3). The first step is to review the mission requirements and make a determination of its needs. This will usually result in the generation of a requirement document.

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<sup>63</sup> “Federal Acquisition Regulation,” subpart 2.101, <http://farsite.hill.af.mil/reghtml/regs/far2afmcfars/fardfars/far/Far1toc.htm#TopOfPage> (accessed June 2006).

<sup>64</sup> The Minister of National Defense of the Republic of Lithuania, *Guidance on Public Procurement in the National Defense System*, 2005 (Vilnius, 2005).



Traditionally, the initial identification of a need is one aspect of an acquisition life cycle that is generally the responsibility of the customers (e.g., the program or technical personnel for whom goods or services are being procured).<sup>65</sup> However, under Secretary of Defense Donald Rumsfeld in the current administration, there has been a major shift in the requirement determination process. The previous policy was that the services initiated the need for military systems (“bottom up”). The process has shifted to a more joint approach (“born joint”) in that the Combatant Commander and the Joint Chief of Staff initiate the requirements (“top down”).

Once a requirement has been determined, it normally falls into one of four acquisition categories: “(1) the need for new capability, (2) the need to improve existing capability, (3) the need to exploit opportunity to reduce cost, or (4) the need to maintain current capability.”<sup>66</sup>

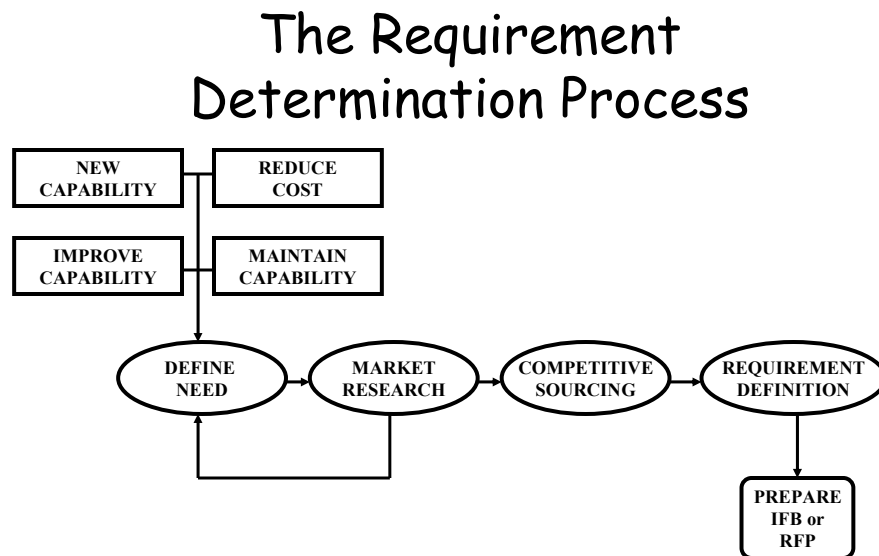


Figure 3. Overview of the Requirements Determination Process<sup>67</sup>

<sup>65</sup> Federal Transit Administration, “Best Practices Procurement Manual,” May 29, 2002, <http://www.fta.dot.gov/library/admin/BPPM/toc.html> (accessed June 2006).

<sup>66</sup> R. Marshall Engelbeck, *Acquisition Management* (Virginia: Management Concepts, Inc., 2002), 88.

<sup>67</sup> *Ibid.*, 89.

After the agency's need is defined, the next step in the process is to conduct market research. Market research is "the process used to collect, organize, analyze, present, and maintain data for the purpose of harnessing the capabilities, technology, and competitive forces of the marketplace to meet an organization's needs for supplies and or services."<sup>68</sup> Thus, market research should be conducted aggressively and thoroughly as this is a critical step that must be taken when developing government requirements and determining how to satisfy them. The objective of this process is to determine the potential sources for a system, item or service being sought. Furthermore, "Better understanding of the marketplace increases the likelihood that the Government's needs will be met at a reasonable price."<sup>69</sup>

The FAR goes on to address several benefits of conducting and utilizing the results of market research. It states that: "Agencies must use the results of market research to determine if sources capable of satisfying the agency's requirement exist... to determine the practices of firms engaged in producing, distributing, and supporting commercial items (and services), such as terms for warranties, buyer financing, maintenance and packaging, and marking."<sup>70</sup> Essentially, market research process includes the efforts to identify products or services in the marketplace and also to determine if requirements can be satisfied through commercial items.

Market research is a combined effort of several individuals, including the program office, contracting personnel, the user, technical representatives, industry specialists, and price analysts. It is one of the first steps taken in developing acquisition plans. FAR subpart 10.001 states that based on the circumstances, appropriate market research should be conducted before developing new requirements documents for an

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<sup>68</sup> National Contract Management Association, Commercial Pricing Manual, 1998 (Washington, D.C. 1998).

<sup>69</sup> Office of the Secretary of Defense Acquisition, Technology and Logistics (Acquisition Initiatives), Commercial Item Handbook (Version 1.0), 2001, (Washington, D.C., 2001).

<sup>70</sup> Federal Acquisition Regulation, subpart 10.001(a)(3)(iv), <http://farsite.hill.af.mil/reghtml/regs/far2afmcfars/fardfars/far/Far1toc.htm#TopOfPage> (accessed June 2006).

acquisition, before soliciting offers for planned acquisition which are expected to exceed \$100,000 (the Simplified Acquisition Threshold (SAT)), and for acquisitions estimated to be less than the SAT as required or if justifiable.<sup>71</sup>

There are various databases and techniques available to assist in conducting market research. For example, there are databases which contain required sources of supplies or services such as the government-wide database of contracts and other procurement instruments intended for use by multiple agencies. Additionally, an effort should be made to encourage the participation of small businesses, small disadvantaged businesses, and women-owned small businesses in the initial or later phases of the life cycle. FAR subpart 10.002(b) (2) list the following techniques that can be used (individually or combined) when conducting market research:

- Contacting knowledgeable individuals in Government and industry regarding market capabilities to meet requirements.
- Reviewing the results of recent market research undertaken to meet similar or identical requirements.
- Publishing formal requests for information in appropriate technical or scientific journals or business publications.
- Querying the Government-wide database of contracts and other procurement instruments intended for use by multiple agencies. And other Government and commercial databases that provide information relevant to agency acquisitions.
- Participating in interactive, on-line communication among industry, acquisition personnel, and customers.
- Obtaining source lists of similar items from other contracting activities or agencies, trade associations or other sources.
- Reviewing catalogs and other generally available product literature published by manufacturers, distributors, and dealers or available on-line.
- Conducting interchange meetings or holding pre-solicitation conferences to involve potential offerors early in the acquisition process.

To make smart business judgment, it is important to have up-to-date information available. Thus, it is essential to ensure that market research is a continuous process throughout an acquisition. However, “the requirements determination process

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<sup>71</sup> Federal Acquisition Regulation, subpart 10.001 (a)(2)(i).

ends with the prospective user determining which of the supplies or services will be provided using government capabilities or which will be purchased using the contracting process.”<sup>72</sup>

During or after market research, the determination of whether to make or buy the product (competitive sourcing) can be determined. Commercial and non-developmental items should be considered as the preferred source of supply. Preference should be given to commercial and non-developmental items based on open standards and commercial item descriptions to the maximum extent practicable. However, priority should be given to the use of commercial items. If not available, then non-developmental items can be considered. If products with closed interfaces are to be acquired, the risks and impacts on total cost of the ownership should be evaluated. The least costly alternative should be the focus of the make or buy decision process.<sup>73</sup>

Final step in requirement determination process is to define requirements (prepare technical specifications). Procurement officials encourage free and open competition by ensuring that specifications are not exclusionary. However, their role is usually that of an advisory nature because it is ultimately the customers who generally have the greatest understanding of functional and performance requirements; they usually prepare specifications or statements of work. “To the utmost extent possible, Government requirements must be stated in terms of measurable standards—functions to be performed, desired performance, or essential physical characteristics.”<sup>74</sup> Furthermore, “Technical Specifications and Statements of Work must clearly describe the products and services to be procured in terms which will permit full and open competition and which will meet the buying agency's minimum essential needs.”<sup>75</sup>

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<sup>72</sup> R. Marshall Engelbeck, *Acquisition Management* (Virginia: Management Concepts, Inc., 2002), 97-98.

<sup>73</sup> Ibid., 99-100.

<sup>74</sup> Office of the Secretary of Defense Acquisition, Technology and Logistics (Acquisition Initiatives), *Commercial Item Handbook* (Version 1.0), 2001, (Washington, D.C., 2001).

<sup>75</sup> Federal Transit Administration, “Best Practices Procurement Manual,” May 29, 2002, <http://www.fta.dot.gov/library/admin/BPPM/toc.html> (accessed June 2006).

**b. Acquisition Planning**

It is said that ten minutes of planning can save sixty minutes in crisis. This might even be a conservative ratio. Steve McConnell, author of *Software Project Survival Guide* puts the ratio even higher, at 250:1 for software projects. According to McConnell, every hour spent planning can save 250 hours of rework and crisis management in the implementation stage.<sup>76</sup>

“Acquisition planning is the process by which the efforts of all personnel responsible for an acquisition are coordinated and integrated through a comprehensive plan for fulfilling the agency need in a timely manner and at a reasonable cost.”<sup>77</sup> FAR subpart 7.102 further states that “the purpose of acquisition planning is to ensure that the Government meets its needs in the most effective, economical, and timely manner.” Additionally, the goal of agencies should be “to promote and provide for the acquisition of commercial items or non-developmental items to the maximum extent practicable as well as to promote full and open competition... An acquisition plan provides the overall strategy for accomplishing and managing acquisition.”<sup>78</sup> Essentially, the plan should address the usual questions: who, what, when, where, why and how the acquisition strategy planning process will be conducted.

Acquisition plans and strategies will vary because items being procured differ in estimated dollar value and complexity. Acquisition plans and strategies normally address the acquisition requirements, funding, make or buy decisions, scheduling, key program/procurement personnel, market research, public notifications, competition, socioeconomic considerations, source selection, award, delivery, and possible follow-on subcontracts. Acquisition planning usually stresses the following: “full cooperation between the program, budgeting and procurement organizations to fully

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<sup>76</sup> Steve McConnell, *Software Project Survival Guide: How to Be Sure Your First Important Project Isn't Your Last* (Redmond, WA: Microsoft Press, 1997).

<sup>77</sup> “Assistance to Customers for the Development of Acquisition Plans,” Department of Energy, <http://cio.doe.gov/RBManagement/Business/clauses/acqplanguide.doc> (accessed May 2006).

<sup>78</sup> Federal Acquisition Regulation,” subpart 7.102, <http://farsite.hill.af.mil/reghtml/regs/far2afmcfars/fardfars/far/Far1toc.htm#TopOfPage> (accessed June 2006).

support program objectives; early involvement by procurement personnel during the program planning phase; use of pre-contracting techniques that may shorten the procurement cycle time; and understanding the entire acquisition process from program inception to completion.”<sup>79</sup>

An acquisition plan should be general enough to allow program management some flexibility. However, it should contain enough details to give coordinating and approving officials enough information regarding the technical and business aspects of the acquisition which they can utilize to base their decision. It is important to ensure that the plan is kept short and unambiguous. The only requirement of a plan is a statement of the facts and rationale supporting the technical and business judgments. A layman or even an acquisition professional that is unfamiliar with the program should be able to understand what is being proposed.<sup>80</sup>

Acquisition planning should begin as soon as the agency need is identified. It is best to start the plan well in advance of the fiscal year in which contract award or order placement is required. When developing the plan, the planner<sup>81</sup> should form a team of all those who will be responsible for important aspects of the acquisition, such as contracting, technical, personnel, fiscal and legal. One of the first actions that the planner usually takes is reviewing previous plans for similar acquisitions and discusses them with key personnel involved in those acquisitions. This normally facilitates a smooth and efficient process.<sup>82</sup>

A periodic review of the acquisition plan is necessary to ensure that it is up to date. For example, significant changes may require revising the plan. It is also important that the plan address milestones for making decisions. This contributes

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<sup>79</sup> “Acquisition Planning Guidelines,” Sandia National Laboratories, <http://www.sandia.gov/policy/11g.pdf> (accessed April 2006).

<sup>80</sup> Ibid.

<sup>81</sup> The planner is a designated person or office responsible for developing and maintaining a written plan or the planning function in acquisitions where a written plan is not required.

<sup>82</sup> “Federal Acquisition Regulation,” subpart 7.101, <http://farsite.hill.af.mil/reghtml/regs/far2afmcfars/fardfars/far/Far1toc.htm#TopOfPage> (accessed June 2006).

significantly to the attainment of the acquisition objectives. “All the technical, business, management, and other significant considerations that will control the acquisition should be addressed.”<sup>83</sup>

Within the acquisition plan, acquisition professionals identify which government needs can be best met by procuring products or services outside the organization. During this phase the government considers whether to procure (outsource decision), how to procure (procurement method and contract type), what to procure (products and services needed) how much to procure (quantity desired), and when to procure (based on required delivery schedule). Identifying risks and opportunities associated with the plan is also addressed.

The significance of an acquisition plan is more than just determining when and what to purchase. The FAR states: “the contents and details of the acquisition plan will vary in accordance with the nature, circumstances and stage of the acquisition... Acquisition plans for service contracts or orders must describe the strategies for implementing performance-based contracting methods or provide rationale for not using those methods.”<sup>84</sup> The following is a list of the contents of a written acquisition plan as presented by the U.S. FAR:<sup>85</sup>

#### **Part I: Acquisition background and objectives**

- **Statement of Need:** The statement of need should be an introduction to the plan. It should briefly summarize the relevant technical and contractual history of the acquisition.
- **Applicable Conditions:** This should state all significant conditions affecting the acquisition and associated contractual action, to include requirements for compatibility with existing or future systems or programs and any known cost, schedule, and capability or performance constraints.

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<sup>83</sup> Federal Acquisition Regulation, subpart 7.105.

<sup>84</sup> Ibid.

<sup>85</sup> This list is a modified version of FAR part 7.105. For information pertaining to policies and procedures, see FAR Subpart 2.101, (Definitions); FAR Subpart 7.105 (Contents of Written Acquisition Plans); DFARS 207.103 (Agency Head Responsibilities); DFARS Subpart 207.105 (Contents of Written Acquisition Plans); AFARS 5107.103 (Acquisition Plans).

- **Cost:** Set forth the established cost goals for the acquisition and the rationale supporting them, and discuss related cost concepts to be employed. This also takes into account life-cycle, design-to-cost and cost and should-cost.
- **Capability or performance:** A description of the required supplies or services in the form of performance-based standards.
- **Delivery or performance-period requirements:** Describe the basis for establishing delivery or performance-period requirements
- **Trade-offs:** Among the cost of the program, performance characteristics or capability, and life cycle costs, and delivery schedule objectives
- **Risks:** Technical, cost and schedule risks
- **Acquisition streamlining:** This includes plans and procedures to encourage industry participation by using draft solicitations, pre-solicitation conferences.

## **Part II: Plan of Action**

- **Sources:** Prospective sources of supplies or services
- **Competition:** How competition will be sought, promoted and sustained.
- **Source-selection procedures:** Timing for submission and evaluation of proposals
- **Acquisition considerations:** Type of contract to be used
- **Budgeting and funding:** How budget estimates are derived
- **Product or service descriptions:** Choice of product or service description types to be used
- **Priorities, allocations, and allotments:** When applicable, specify the method for obtaining and using priorities, allocations, and allotments, and the reasons for them
- **Management information requirements:** Management system to be used by the government to monitor the contractor's effort.
- **Make or buy:** Considerations given to make or buy programs
- **Test and evaluation:** Government and contractor test program for each major phase of a major system acquisition.
- **Logistics considerations:** Obtain products that will meet the users needs, to include contractor or agency support, both initially and over the life of the acquisition, reliability, maintainability, and quality assurance requirements, standardization concepts



- **Contract management:** How the contract will be administered, including inspection and acceptance
- **Other considerations:** Foreign sales implications, standardization concepts, industrial readiness program, and Occupational Safety and Health Act

## C. SOLICITATION/SOURCE SELECTION/CONTRACT AWARD

### 1. Lithuania

After requirements determination and acquisition planning, procurement actions (such as solicitation, source selection and award) take place. Their goal is to select the best responsible, responsive source to execute the contract successfully.

Before addressing procedural questions, it is important to analyze who is responsible for the courses of action. There are several institutions (referred to as contracting authorities) responsible for centralized purchasing: the Ministry of National Defense, Armed Forces of Lithuania, Communications and Systems Service, Publication and Information Provision Service, and Infrastructure Development Department. Other institutions, agencies and divisions of the National Defense System acquire supplies, services and works to satisfy their own needs (decentralized purchasing).<sup>86</sup>

In the Lithuanian procurement process, a “contracting officer” position is not established. Instead, as required by legislation, for arranging and executing procurement, the contracting authority appoints a procurement commission, sets its tasks and grants the powers required to fulfill those tasks. The commission usually is obligated to prepare contract documents, verify suppliers’ qualification, evaluate and compare the tenders, produce preliminary ranking of tenders and select the successful tenderer. The commission makes decisions by a simple majority vote. It is composed of at least three persons knowledgeable in the areas needed to conduct the procedures successfully (technical, financial, business or legal expertise). Members of procurement commissions usually are cross-functional (for example, procurement specialists, technical or business experts, budgeting specialists, and lawyers) and multi-organizational, selected from different institutions and subdivisions of National Defense System. As a rule, the

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<sup>86</sup> Due to the scope of this project, only centralized procurement will be addressed.

commission chairman is chosen from among MoND Procurement department officials who have knowledge in procurement legislation as well as contracting experience. The chairman of the procurement commission accomplishes many functions similar to a contracting officer, except he or she cannot make decisions on their own and does not have the authority to sign contracts thereby committing the government. In addition to procurement commission, when acquiring high-value equipment, the contracting authority establishes a board of technical experts (working group) for the technical evaluation of tenders. Their decision on the responsiveness of tenders to technical specification serves as a recommendation to the procurement commission.

*a. Types of Award Procedures*

One of the most important decisions to make in the beginning of the procurement process is to determine which type of award procedure to follow. According to the Law on Public Procurement, contracts can be awarded utilizing one of the following procedures: open procedure, restricted procedure, negotiated procedure and competitive dialogue. These procedures are specified by law as follows.<sup>87</sup>

The open procedure allows any interested suppliers to submit a tender. This procedure is very similar to the U.S. “sealed bidding” method.

The restricted procedure is the procedure in which tenders may be submitted only by those suppliers who are invited by contracting authority. A restricted procedure is conducted in two phases. During the first phase, the contracting authority publishes the contract award notice and, on the basis of the qualification criteria specified therein, selects the candidates to be invited to submit their tenders. During the second phase, the contracting authority analyses and evaluates submitted tenders. That procedure is beneficial when the contracting authority expects many tenders, so it can save time on the evaluation of tenders by restricting competition to the best qualified suppliers.

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<sup>87</sup> The Seimas of the Republic of Lithuania, “Law on Public Procurement of the Republic of Lithuania,” December 22, 2005, [http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc\\_l?p\\_id=268778&p\\_query=](http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=268778&p_query=) (accessed June 2006).

Open procedure and restricted procedure can be used by contracting authorities without limitations. Other procedures may be applied only under special conditions stated in the law. These include negotiated procedures and competitive dialogue.

Negotiated procedure is when contracting authority consults their suppliers of choice and negotiates the terms of contract with one or more of these. The contracting authority has to verify suppliers' qualification and then can negotiate with qualified suppliers the technical, economic, legal and other aspects of tender, aiming for the highest economic advantage. This procedure is very similar to the "negotiation" method of the U.S.

Competitive dialogue is the procedure in which any supplier may request to participate and whereby the contracting authority conducts a dialogue with the candidates admitted to that procedure, with the aim of developing one or more suitable alternatives capable of meeting its requirements, and on the basis of which the candidates chosen are invited to tender.

For award of contracts with a value below the international threshold level specified in Article 11 of the Law on Public Procurement, simplified procedures are applied: simplified open procedure, simplified restricted procedure, simplified negotiated procedure and for micro procurement, "the usual commercial practice."

Finally, contracts which are excluded from the Law on Public Procurement<sup>88</sup> are awarded using slightly different procedures defined by government regulations, such as a closed procedure, negotiated procedure, and request for quotations.

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<sup>88</sup> For example, contracts for armaments, ammunition, explosives and other defense related supplies, contracts related to stationing of Lithuanian Armed forces units in foreign states under international agreement, or contracts related to state secrets and national security.

***b. Solicitation***

Submitting a high-quality solicitation is vital to the buyer's success. Better solicitation from the buyer generally results in having better bids, quotes, proposals or tenders submitted by the seller in a timelier manner. Poorly communicated solicitations often results in delays, confusion, fewer bids or proposals, and lower quality responses.<sup>89</sup>

In the United States the term “solicitation” is used to refer to the process of issuing Invitation for Bids, Request for Proposals, or Request for Quotations, and obtaining responses from contractors.<sup>90</sup> Although this specific term is not used in the Lithuanian acquisition process, it will be utilized in this paper for the sake of comparison to refer to the same part of acquisition process: the procedures of publicizing contract actions, providing the suppliers with contract documents and obtaining responses from them. All of those procedures are described in the following paragraphs.

In Lithuania, procedures of publicizing contract actions are defined in Articles 22 and 23 of the Law on Public Procurement.<sup>91</sup> Contracting authorities publish prior information notices of any planned procurement; this pertains to cases where contracting authorities desire to reduce the time for submission of tenders and the value of contract awarded exceed 750,000 euro for supplies and services or 5,923,000 euro for works. These notices should be published at the beginning of the fiscal year for contracts for supplies and services or, immediately after approval of construction for contracts for works. Authorities must also publish separate contract award notices for every contract (except in cases of awarding the contract by method of negotiated procedure without publication.)

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<sup>89</sup> Gregory A Garrett, “World-Class Contracting: 100 + Best Practices for Building Successful Business Relationships” (Arlington, VA: ESI International 1997), 8.

<sup>90</sup> Marshall R. Engelbeck, *Acquisition Management* (Virginia: Management Concepts, Inc., 2002), 141.

<sup>91</sup> When conducting procurement procedures for contracts excluded from the Law on Public Procurement (such as those related to stationing Lithuanian Armed forces units in foreign states under international agreements, contracts for armaments, ammunition, explosives and other defense related supplies or contracts related to state secrets and national security), the publishing of notices are not required.

These notices are publicized in the Official Journal of the European Union<sup>92</sup> as well as in the Lithuanian publication “Informaciniai pranesimai,” and in the central public procurement information system website.<sup>93</sup> The requirement that notices of high value contract actions be publicized in the journal distributed throughout the European Union (and not only nationally) guarantees a higher degree of competition and transparency.

The next step in solicitation is providing contractors with contract documents and receiving tenders. The contracting authority provides contract documents upon contractors’ request or by placing them on the internet. The contract documents should include instructions to suppliers (how to draw up tenders), supplier qualification requirements, supplier qualification assessment procedure, documents required to prove supplier qualifications. The documents should also indicate the products, services or works concerned, amounts, the nature of services incidental to the main public supplies contract, time limits for delivery of products, rendering of services and performance of works, technical specifications, tender evaluation criteria and conditions, terms and conditions of the contract proposed by the contracting authority, tender security and contract performance security requirements, deadline, place and manner for receipt of tenders, and other relevant information about contract conditions and award procedures<sup>94</sup>.

An issue to consider is that the Law on Public Procurement allows clarifying and specifying the contract documents after their submission to suppliers, but do not allow changes. That limits the flexibility of the process and creates additional grounds for dispute and abuse by companies who did not get an award. For example, in 2005, the Lithuanian Armed Forces were brought to trial by a supplier for making some improvements in evaluation criteria and technical specifications after the submission of contract documents. A company which did not get an award used this issue as a basis for

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<sup>92</sup> The requirement to publicize separate contract award notice in the Official Journal occurs when the contract value is above the international threshold value, stated in the Article 11 of the Law on Public Procurement.

<sup>93</sup> The Seimas of the Republic of Lithuania, “Law on Public Procurement of the Republic of Lithuania,” December 22, 2005, [http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc\\_l?p\\_id=268778&p\\_query=](http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=268778&p_query=) (accessed June 2006).

<sup>94</sup> Ibid.

their complaint to cancel procurement. The case is not resolved yet, but it is a very appropriate illustration of the consequences of the imperative regulation method in public procurement.

Tenders have to be submitted before the deadline in writing, duly signed by suppliers, in sealed and stamped envelopes (except in cases where the contracting authority accepts tenders submitted by electronic means). If the tender is received after the specified date and hour, it must be returned to the sender unopened.

*c. Source Selection*

Source selection is the process for determining the winning or successful tender. In Lithuania, source selection starts with opening the tenders in a public meeting with all suppliers present and with submitted tenders read out.<sup>95</sup> Confidential and detailed evaluation of the tenders follows. It includes several steps: verification that suppliers are qualified and responsible, determination that submitted tenders are responsive and selecting the successful tender according to evaluation criteria stated in the contract documents. Those steps are described in more detail below.

**VERIFYING SUPPLIERS' QUALIFICATION:** A basic requirement for source selection in Lithuania is that a contract be awarded only to a supplier who is competent, reliable and capable of carrying out contractual obligations. Regardless of how low a price may be offered, the contract cannot be awarded to a supplier who is not responsible. Suppliers may be qualified before bidding; in that case, tenders can be submitted only by qualified suppliers. This approach is called prequalification and may be used in negotiated or restricted procedures. However, in the majority of cases, the post-qualification approach is utilized, and qualification of suppliers is verified when they submit tenders.

The contracting authority defines in contract documents the minimum requirements for the economic and financial standing and the technical and professional capacity of suppliers; latter are required to demonstrate that they meet them. Usually

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<sup>95</sup> The framework of the open procedure is used as a general description of source selection. Other types of award procedures have some specifics which are not addressed in this paper due to the macro-level focus of the research.

suppliers are required to have adequate financial resources, necessary technical expertise, technical equipment and facilities, etc. In the evaluation process, the contracting authority uses a “strict compliance” rule. If any of the qualification requirements is not met, the tender of that supplier is rejected. No trade-offs are allowed. This sometimes leads to a situation then minor deficiencies (for example, turnover of the company is one dollar lower than required) necessitates the rejection of good tenders, even though the contracting authority may have confidence in the company’s capability.

Additionally, among recent reforms on the issue, in 2005 the amendments to the Law on Public Procurement allowed the creation and maintenance of an official list of qualified suppliers. If a company is registered in the list, the contracting authority is not obligated to verify its qualification. This approach might streamline evaluation procedures, but the list does not yet exist.

**EVALUATION AND COMPARISON OF TENDERS:** After verification of qualification procedures, the detailed evaluation of tenders follows. Every tender of qualified suppliers is evaluated against the requirements of contract documents (Do the offered supplies, services or work meet technical specification? Is the tender submitted in compliance with formal requirements? Are the prices reasonable? And so forth). Only responsive tenders are compared to each other.

To compare tenders to each other and to determine the winning tender, evaluation criteria are used. According to the Law on Public Procurement the contracting authority can base an award of the contract on one of two criteria:

1. the most economically advantageous tender (awarded when the contracting authority evaluates various criteria directly linked to the subject of the public contract in question: for example, quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost-effectiveness, after-sales service and technical assistance, delivery date, delivery period or period of completion)
2. the lowest price only.<sup>96</sup>

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<sup>96</sup> The Seimas of the Republic of Lithuania, “Law on Public Procurement of the Republic of Lithuania,” December 22, 2005, [http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc\\_l?p\\_id=268778&p\\_query=](http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=268778&p_query=) (accessed June 2006).

In most contract awards, the lowest price evaluation criteria is applied. This means that as a rule, a contract is awarded for the supplier who meets only minimum technical requirements. This situation has several causes. One of those is that legislation on the use of the most economically advantageous criteria is too restrictive. Contracting authorities are required to specify the relative weightings for each of the criteria chosen.<sup>97</sup> Therefore, this evaluation is not trade-offs based, but mathematical. For a long time contracting authorities had to follow a regulation which required giving not less than 60 percent weight to the price.<sup>98</sup> That practice resulted in awarding the contract to the lowest price supplier anyway. This is true even now when this regulation is not mandatory, but considered simply guidance. Furthermore, any award for a tenderer based on criteria other than the lowest price always involves excess oversight by controlling institutions and auditors, and that discourages contracting authorities from trying. Another problem is that so far in the National Defense System there is no capability (qualified and experienced personnel, as well as guidance) to calculate the life cycle (or total ownership) cost of the systems acquired. Thus the decisions of source selection are made based on the procurement cost.

After evaluating the tenders, the contracting authority produces the preliminary ranking of tenders in decreasing order of economic advantage or increasing order of prices and immediately informs the tenderers about this decision and for unsuccessful tenderers also explains the reasons for rejecting their tenders (i.e., clarifies which requirements the supplier failed to meet). The contracting authority can approve the preliminary ranking and select the winning tender no earlier than ten days after dispatching the preliminary ranking to suppliers or, if any claims are submitted, after their settlement.

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<sup>97</sup> The Law on Public Procurement allows the contracting authority to specify the importance order of criteria only in exceptional cases where the purpose of procurement does not allow technically establishing the relative weight of the criteria.

<sup>98</sup> Office of Public Procurement, "The regulation on the methods of establishing criteria for evaluation of the most advantageous tenders," February 26, 2003, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=206031&p\\_query=&p\\_tr2=](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=206031&p_query=&p_tr2=) (accessed June 2006). This regulation did not apply to the contracts excluded from the Law on Public Procurement such as contracts for armaments, ammunition, explosives and other defense related supplies; contracts related to stationing of Lithuanian Armed forces units in foreign states under international agreement; or contracts related to state secrets and national security.



If suppliers believe that the contracting authority has not complied with the requirements of the Law on Public Procurement and has violated their lawful interests, they can file a claim. Claims should be filed with the contracting authority in writing within five days from when the supplier became aware (or should have become aware) of the violation of his lawful interests. The contracting authority must fully examine the claim and make a justified decision within five days of the receipt of the claim. If contracting authority fails to examine the claim within that timeframe or rejects the claim, the supplier may file a complaint with the general jurisdiction court. District courts consider those complaints as first instance courts; the final instance court is the Supreme Court. The court should make a decision within sixty days of the receipt of complaint.<sup>99</sup>

***d. Contract Award***

The contracting authority awards the contract to the supplier whose tender is recognized as the successful tender. Contract awards usually follow one of two procedures: offer and acceptance (in case of micro purchases) or bilateral contract. From the government side, a bilateral contract is signed by the head of the contracting authority or a person authorized by him on case by case basis. In concluding the contract, it is forbidden to change the price in the winning tender or the other terms and conditions stated in the contracting documents and tender.

**2. United States**

After the steps in the acquisition planning phase have been completed, the result is normally a solicitation document.

***a. Types of Award Procedures***

The methods of solicitation and selection allowed within the Federal contractual sphere are listed in FAR – Subpart.14.1 (Use of Sealed Bidding), FAR - Subpart 15.2 (Contracting by Negotiation), and DFARS – Subpart 214- Sealed Bidding and 215.2 – Contract by Negotiation. They are listed as: 1) Micro purchases only for

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<sup>99</sup> The Seimas of the Republic of Lithuania, “Law on Public Procurement of the Republic of Lithuania,” December 22, 2005, [http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc\\_l?p\\_id=268778&p\\_query=](http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=268778&p_query=) (accessed June 2006).

contract amounts less than \$2,500; 2) Small purchase procedures only for contract amounts less than the simplified acquisition threshold (currently \$100,000); 3) Sealed bids where there is a complete, adequate, and realistic specification or purchase description, two or more responsible bidders are willing and able to compete, the procurement lends itself to a firm fixed price contract and the selection can be made primarily on the basis of price, and no discussion with bidders is needed after receipt of offers; 4) Contract by negotiation (competitive proposals); 5) Noncompetitive proposals (sole source) procurement, only if it can be justified why soliciting additional competition in the manner explicitly defined in the FAR Subpart.15.2 was not possible.

***b. Solicitation***

Solicitation is the process of issuing Invitation for Bids, Request for Proposals, or Request for Quotations, and obtaining quotations, bids, offers, or proposals as appropriate.<sup>100</sup> The contracting officer is the central point of the solicitation process.

There are various methods by which offers may be solicited. Depending on the requirements of the chosen method of procurement and socio-economic objectives, solicitation for offers may be conducted via a telephone call (in the case of a micro-purchase), bidder conferences, advertising, incentive strategies, or in many other forms including a lengthy request for proposals (in the case of a competitive proposal multi-volume requests for proposals). In the U.S., proposed contract actions for acquisition of supplies and services expected to exceed \$25,000, other than those covered by certain FAR exceptions or special situations, are publicized in the Government Point of Entry (GPE) for at least 15 days as a synopsis, prior to the release of the solicitation.<sup>101</sup>

Based on procurement plans and the specifications developed with a customer, the procurement process is generally initiated by soliciting offers. The solicitation phase is a critical element of the procurement process because this is where the ground rules of the competition are established. In particular, all information to be

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<sup>100</sup> R. Marshall Engelbeck, *Acquisition Management* (Virginia: Management Concepts, Inc., 2002), 141.

<sup>101</sup> "Federal Acquisition Regulation," subpart 5.203, <http://farsite.hill.af.mil/reghtml/regs/far2afmcfars/fardfars/far/Far1toc.htm#TopOfPage> (accessed June 2006).

supplied by offerors is defined, and dates for receipt of proposal are established. The timeframe for publicizing anticipated contractual actions is determined by the type of requirement (for example, a Non-developmental item (NDI) or commercial item) and the anticipated dollar value of the contract. Specifications are written clearly and without ambiguity and all terms and conditions of the proposals are specified. Lastly, it represents a signed offer to purchase.

The process can be summarized as follows: The contracting activity sends out a proposal, stating the requirements, specifications, terms and conditions. If a contractor agrees and signs the solicitation then it can be considered a signed offer to purchase or provide service. At this point, the government cannot back out. It is important to note that when buying in commercial market, the seller dictates terms and conditions, but when the government is making a purchase (for example, a unique buy), the government informs the contractor of the terms and conditions.

Proposals may not be solicited unless there is intent to award a written contract. In instances where the government wishes to obtain information for planning purposes, a Request for Information (RFI) is utilized. Almost all companies are eligible to receive solicitations; however, there are some companies that are restricted. A list of these companies who are either debarred or suspended can usually be obtained from General Services Administration (GSA). Additionally, FAR – Subpart.15.2, and DFARS – Subpart 215.2 are sources of reference pertaining to solicitations.

At the end of the synopsis period an additional 30 days is authorized to allow offerors to respond to an IFB or RFP solicitation. Additionally, FAR part 5.101(a)(2) states that contracts not expected to be less than \$25,000 but greater than \$10,000 are required to be posted in a public place no later than the date the solicitation was issued, and must remain posted for at least 10 days or until after quotations have been opened, whichever is later.

The terms in the solicitation of offers are largely determined by the method of selection used. When offers are received (whether quotations, bids, or proposals), one may be accepted, all may be rejected, or (unless the sealed bidding

method is used) a request can be made for additional offers. Regardless of the procurement method, when an offer is accepted, a binding contract is created according to the terms of the offeror. At the end of the solicitation phase, the result is usually a proposal.

*c. Source Selection*

“The objective of source selection when conducting negotiated procurement is to select the proposal that represents the best value.”<sup>102</sup> However, when soliciting sealed bids, the objective of the award is based only on price and other price-related factors.<sup>103</sup> During the source selection phase, the focus is on establishing and applying specific criteria for the evaluation and discrimination of offers (referring to bids, in sealed bidding) in order to make a qualified selection.<sup>104</sup>

The objectives of the source selection process are to:

ensure the impartial, equitable, and comprehensive evaluation of offerors’ proposals; maximize the efficiency and minimize the complexity of the proposal evaluation and contractor selection process so as to minimize the cost of the process to government and industry; select the offeror whose proposal is the best value to the government considering cost/price, technical factors, and past performance; document the basis for the selection decision<sup>105</sup>

The primary governing authorities for the source selection process is the Federal Acquisition Regulation (FAR), Defense Federal Acquisition Regulation Supplement (DFARS), and Defense Acquisition Regulation Supplement (DARS).

The agency head is overall responsible for the source selection process and is responsible for designating a Source Selection Authority (SSA). The SSA is usually the contracting officer; however, in certain instances the agency head may designate another individual for a particular acquisition or group of acquisitions.

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<sup>102</sup> Federal Acquisition Regulation, subpart 15.302.

<sup>103</sup> Ibid., subpart 14.201-8.

<sup>104</sup> Although there are more than one method of procurement, due to the scope of this project only a broad overview will be discussed.

<sup>105</sup> “NAVSEA Source Selection Guide,” Defense Acquisition University, <http://akss.dau.mil/docs/0034GDOC.doc> (accessed May 2006).

The FAR specifies that the SSA is usually responsible to do the following:

Establish an evaluation team, tailored for the particular acquisition, that includes appropriate contracting, legal, logistics, technical, and other expertise to ensure a comprehensive evaluation of offers; approve the source selection strategy or acquisition plan, if applicable, before solicitation release; ensure consistency among the solicitation requirements, notices to offerors, proposal preparation instructions, evaluation factors and sub-factors, solicitation provisions or contract clauses, and data requirements; ensure that proposals are evaluated based solely on the factors and sub-factors contained in the solicitation; consider the recommendations of advisory boards or panels (if any); and select the source or sources whose proposal is the best value to the government.<sup>106</sup>

The contracting officer remains the focal point for inquiries from actual or prospective offerors after the release of the proposal. After receipt of proposals, the CO maintains control of exchanges with offerors in accordance with FAR subpart 14 or 15 and then finally awards the contract.

To accomplish the source selection quickly and effectively, it is important to ensure that the right people are selected from the source selection team. It is also imperative to conduct as much advance planning and encourage open communication with industry when producing a Request for Proposal (RFP) or Invitation for Bid (IFB). RFPs or IFBs should clearly communicate the end user's requirements.

**DETERMINING THE CONTRACTOR'S RESPONSIBILITY** A contract is awarded only to contractors who are responsible. The CO has the authority to use discretionary judgment in determining the likelihood of a prime contractor or subcontractor's ability to perform a future contract. Therefore, the CO must also determine a company's responsibility. Essentially, responsible contractors possess the ability to perform successfully. For example, a debarred or suspended company is not considered responsible source. Thus, a contract cannot be awarded to whether or not there is sufficient justification (sole source), to allow for an award. Additionally, "the

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<sup>106</sup> "Federal Acquisition Regulation," subpart 15.303, <http://farsite.hill.af.mil/reghtml/regs/far2afmcfars/fardfars/far/Far1toc.htm#TopOfPage> (accessed June 2006).

contractor's integrity, compliance with public policy, record of past performance, and financial and technical resources are generally taken into account.”<sup>107</sup> The contractor must have or possess the ability to obtain adequate resources.

There are tools available to assist the CO and provide guidance in making judgment regarding the contractor's responsibility. The primary guidance is provided in U.S. FAR subpart 9.104 which defines standards and states that contractors must have the following to be deemed responsible:

Adequate financial resources to perform the contract, or the ability to obtain them; be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments; have a satisfactory performance record. A prospective contractor shall not be determined responsible or non-responsible solely on the basis of a lack of relevant performance history, except as provided in 9.104-2; have a satisfactory record of integrity and business ethics. Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them (including, as appropriate, such elements as production control procedures, property control systems, quality assurance measures, and safety programs applicable to materials to be produced or services to be performed by the prospective contractor and subcontractors). Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and be otherwise qualified and eligible to receive an award under applicable laws and regulations.<sup>108</sup>

DETERMINING THE CONTRACTOR'S RESPONSIVENESS: A bid<sup>109</sup> or proposal<sup>110</sup> must be determined as responsive. To be determined responsive, a prospective contractor must have submitted a bid or proposal which conforms in all material respects to the invitation for bid or request for proposal. Further, the contractor's offer must also be considered responsive to the solicitation in order to be

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<sup>107</sup> Federal Transit Administration, “Best Practices Procurement Manual,” May 29, 2002, <http://www.fta.dot.gov/library/admin/BPPM/toc.html> (accessed June 2006).

<sup>108</sup> “Federal Acquisition Regulation,” subpart 9.104, <http://farsite.hill.af.mil/reghtml/regs/far2afmcfars/fardfars/far/Far1toc.htm#TopOfPage> (accessed June 2006).

<sup>109</sup> Term used when referring to sealed bidding.

<sup>110</sup> Term used when referring to negotiated procurement

awarded a contract, regardless of the procurement method used to select that contractor (sealed bidding, competitive proposal, or sole source). Offers that do not conform to necessary requirements are normally rejected.

THE EVALUATION PROCESS: Based on the complexity of the acquisition, there are several processes and techniques which may be used to design competitive acquisition strategies (for negotiated procurement). One such technique is the best value continuum, where acquisition personnel are challenged with obtaining the best value proposal among many offerors. In different types of acquisitions, the relative importance of cost or price may vary. Best value continuum should be conducted in accordance with FAR Part 15.<sup>111</sup> There are two specific techniques used: trade-off process and lowest price technically acceptable.

The trade off process is used when it is in best interest of buyer to consider award to other than lowest bid or other than highest technically rated offeror. FAR part 15.101 states that “All evaluation factors as well as sub-factors and their relative importance that will affect award shall be clearly stated in solicitation.” The solicitation generally states the relative importance of all evaluation factors to cost or price. This method facilitates the tradeoff process among cost or price and non-cost factors which subsequently allow the government to accept other than the lowest priced proposal.<sup>112</sup>

“The lowest price technically acceptable method is used when the best value is expected to result from technically acceptable proposal with lowest evaluated price.”<sup>113</sup> It is important that the solicitation specifies that the award will be made on the basis of lowest evaluated price of proposals meeting or exceeding the acceptable standards for non-cost factors. If a small business past performance is not acceptable, the Small Business Administration (SBA) is usually tasked with making the determination of

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<sup>111</sup> “Federal Acquisition Regulation,” subpart 15.101, <http://farsite.hill.af.mil/reghtml/regs/far2afmcfars/fardfars/far/Far1toc.htm#TopOfPage> (accessed June 2006).

<sup>112</sup> Ibid., subpart 15.101-1.

<sup>113</sup> Ibid., subpart 15.101-2.

competency. Additionally, “trade-offs are not permitted, exchanges may occur and proposals are evaluated for acceptability using non-cost/price factors.”<sup>114</sup>

The sealed bidding procedures are usually straightforward. The contracting officer will evaluate price and price related factors in accordance with FAR subpart 14.201-8. The award is made to the lowest price offered. The following table illustrates the differences between the sealed bidding and competitive proposals.

<b>Elements</b>	<b>Sealed Bidding</b>	<b>Competitive Proposals</b>
1. Criteria for use	Well defined requirement Exchanges not necessary Adequate price comparison Adequate time More than 1 supplier	Research and Development High Risk
2. Solicitation	IFB 2-step method #1 Request for technical proposals #1 Receive technical data without pricing #2 Associated pricing Out for 15 days	RFP Synopsise requirements for subs Out for 30 days
3. Competition	See above	Initially unlimited
4. Source Evaluation	Public bid opening Evaluation for responsiveness Determine price order of preference Evaluation for any non-price factors Determine responsibility of awardees Firm bid rule	Proposals never made public Set competitive range Price is not driving factor Range set by source selection Criteria Price analysis/Cost analysis Pre-award survey for Responsibility
5. #'s Offerors allowed	Market research determine level of comp.	Initially unlimited
6. Exchanges	Very restricted  Award w/o discussions Any discussions-pre-bid conference	Facilitates understanding of requirements/industry capability Clarification-limited communication leading to comp range Negotiation-discussions after comp range

<sup>114</sup> Federal Acquisition Regulation, subpart 15.101-2.



Elements	Sealed Bidding	Competitive Proposals
	Any discussions=amended solicit	Limits on exchanges - i.e. other proposals Freedom of Information Act prevents illicit exchanges
7. Contract Type	Firm Fixed Price, Firm Fixed Price with Economic Price Adjustment	All except Cost Plus Percentage of Cost
8. Determination	Fair, reasonable price in accordance with market Responsibility Best value	Fair, reasonable price in accordance with market/negotiation Responsibility Best value
9. Nature of Prod/Service	Brand name/equal commercial product Functionality easily defined Similar to past purchases	Runs the gambit
10. Source Selection Criteria	Price/Price Related Factors e.g. Discount-2% net 30=pay w/I 30 days contractor discounts 2% Free on board origin/destination Non-price factors	Price & other factors in accordance with best value continuum-section M of RFP
11. Process	Sealed Bid 2-step sealed bid	Requirement-Solicit-Proposal-Evaluation-Source Selection – Negotiation - Award
12. Nature of Process	Formal, standardized Procedural, rigid More objective than subjective	Flexible Can amend/correct deficiencies Exchanges encouraged
13. Steps	Prepare written IFB Fully define requirement Publish IFB in Commerce Business Daily Leave open for 60 days Open in public Synopsisize Reward/execute	Requirement-Solicit-Proposal-Evaluation-source selection-Negotiation-Award
14. Evaluation of offers	Lowest Bid	Competitive range Source selection Criteria
15. Debriefs	No requirement	Yes

Elements	Sealed Bidding	Competitive Proposals
		Competitive range eliminated-less info After contract award-3 days to submit written request. Usually conducted 5 days after receipt of a written request.
16. Problems	Too long Perceived value in products More protests Using process w/o definitive requirements	Tech transfusions Tech leveraging Auctions

Table 3. Sealed Bid vs. Competitive Proposal<sup>115</sup>

***d. Contract Award***

The final function of a contract formation is awarding the contract. Contract awards usually follow one of two actions, offer and acceptance or bilateral contract. When parties are fully in agreement with all of the terms and conditions of the offer, an immediate contract award can be made using a simple offer and acceptance form as the awarding document.

After a contract is awarded the CO must notify the unsuccessful bidders in writing or electronically within three days after the contract award date (for negotiated procurements).<sup>116</sup> For sealed bidding, the CO communicates the acceptance of offer and award of the contract by giving written notice within the specified for acceptance. The award is effective upon mailing (or furnishing the award document by other means) to the successful offeror.<sup>117</sup> There is also a requirement for debriefing competitive proposals; this can be done both prior to and after the award. The FAR subpart 15 provides guidance on the debriefing process. Written requests are required to be submitted within three days after the offeror has received notification of contract award. Debriefings are usually conducted within five days after receipt of a written request.<sup>118</sup>

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<sup>115</sup> Federal Acquisition Regulation, Combination of parts 14 and 15.

<sup>116</sup> Ibid., subpart 15.503(b).

<sup>117</sup> Ibid., subpart 14.408 1(c)(1).

<sup>118</sup> Ibid., subpart 15.505.

## **D. CONTRACT MANAGEMENT/CONTRACT CLOSEOUT**

### **1. Lithuania**

#### ***a. Contract Management***

Contract management is “steps taken by the government representatives responsible for ensuring government and contractor compliance with the terms and conditions of the contract.”<sup>119</sup> Contract management includes all actions of government representatives after the award of the contract until its closeout, such as inspections, testing, acceptance, schedule control, payments, solving of disputes, termination of the contract and so forth. The aim of this stage is to satisfy the customer, to ensure that products delivered and services provided will meet requirements of the contract, and to guarantee effective use of public money. The additional objective of contract administration is to maintain public trust and the integrity of the competitive system.<sup>120</sup>

There are many institutions and officials involved in contract management. First, after the contract award, the contracting authority appoints the commission or assigns one official responsible for overseeing the contract and accepting the products delivered or services provided. The commission or official must insure that the quality, quantity and delivery time of products and services meet the contract requirements. Second, the financial and accounting agencies or subdivisions are liable for timely payments to the suppliers. Other contract management issues remain the responsibility of the contracting authority.<sup>121</sup>

The involvement level of government in the management of the contract depends on the contract type. Lithuanian legislation<sup>122</sup> allows Fixed-Price and Cost Reimbursement groups of pricing arrangements, as well as Indefinite Quantity Indefinite

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<sup>119</sup> Ralph Nash Jr. and others, *The Government Contracts Reference Book: A Comprehensive Guide to the Language of Procurement*. 2<sup>nd</sup> ed. (Washington, D.C.: The George Washington University, 1998), 330.

<sup>120</sup> R. Marshall Engelbeck, *Acquisition Management* (Virginia: Management Concepts, Inc., 2002), 334.

<sup>121</sup> Minister of National Defense, “The Regulation on Organizing Acquisition in National Defense System,” October 6, 2003 (Vilnius, 2003).

<sup>122</sup> Office of Public Procurement, “The Regulation on the Methodology of Establishing Contract Pricing Arrangements,” April 4, 2004, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=270464&p\\_query=&p\\_tr2=](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=270464&p_query=&p_tr2=) (accessed June 2006).

Delivery contracts. However the dominant type of contract used in the Lithuanian National Defense System is the Firm Fixed Price contract, which requires the lowest level of oversight efforts.

The National Defense System personnel interviewed indicate that the weakest link in contract management is quality assurance. The National Defense System budget is not sufficient to outsource testing and inspection services at the level needed, and internal capabilities (laboratories, qualified personnel) to test and inspect are also deficient. The representatives of National Defense System never inspect the production processes in the supplier's facility or review the quality management system of the company for adequacy. (This is especially critical considering that in source selection there is no requirement for suppliers to have implemented ISO 9001:2000 in order to get an award). These factors all lead to a situation where supplies and services are accepted which do not meet requirements of the contract.

Another problem is that the Law on Public Procurement does not allow making any changes to the contract.<sup>123</sup> This provision of the law is too restrictive and limits the government and contractors' flexibility to adjust to situational changes. It also discourages contracting authorities from concluding multi-year contracts, because longer term contracts increase the chances that changes will become necessary. This policy was adopted to maintain the integrity of competitive system, but it has a significant side effect: high risk of failure due to an extremely unstable environment.

Contract termination is rare. Typically termination for default is used when companies refuse to execute their part of contractual obligations.

#### ***b. Contract Closeout***

In the United States the term closeout is used to refer to the process of "settling all outstanding contractual issues to ensure that each party has met all of its

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<sup>123</sup> The Seimas of the Republic of Lithuania, "Law on Public Procurement of the Republic of Lithuania," December 22, 2005, [http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc\\_l?p\\_id=268778&p\\_query=](http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=268778&p_query=) (accessed June 2006). This restriction does not apply to the contracts excluded from the Law on Public Procurement such as contracts for armaments, ammunition, explosives and other defense related supplies; contracts related to stationing of Lithuanian Armed forces units in foreign states under international agreement; or contracts related to state secrets and national security.

obligations and documenting the contract file accordingly.”<sup>124</sup> However, contract closeout as a separate stage is not segregated in the Lithuanian acquisition process. In the Lithuanian National Defense System the dominant type of contract is the Firm Fixed Price contract, which requires comparatively less government involvement. Therefore, the agencies and officers responsible for contract management make sure that each party has met all of its contractual obligations during the contract management stage. Usually the contract is valid until the date stated on it (as a rule, until the end of the fiscal year) and it is considered to be automatically closed out after that day unless it is terminated earlier.

There is no special document to be added to the contract file stating that a contract is closed out. The last step required by the Law on Public Procurement is providing Public Procurement Office with a report on the execution or the termination of the contract.

## **2. United States**

### ***a. Contract Management***

“Contract Administration involves those activities performed by government officials after a contract has been awarded to determine how well the government and the contractor performed to meet the requirements of the contract.”<sup>125</sup> It includes all transactions between the government and the contractor from the time the contract is awarded until the work has been completed and accepted or the contract terminated, payment has been made and any disputes resolved. Any contract involving the expenditure of public funds is subject to review/audit during and after performance to ensure that the government got what it paid for.

Contract management focuses on obtaining supplies and services, on time, within budget and in a timely manner. This requires proper documentation and recordkeeping if these goals are to be achieved. A file should be kept to show that the contracting officer and the contractor have complied with the terms of the contract (i.e., bonds have been submitted,

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<sup>124</sup> Ralph Nash Jr. and others, *The Government Contracts Reference Book: A Comprehensive Guide to the Language of Procurement*. 2<sup>nd</sup> ed. (Washington, D.C.: The George Washington University, 1998), 97.

<sup>125</sup> Office of Federal Procurement Policy, “A Guide to Best Practices for Contract Administration,” October 1994, <http://www.acqsolinc.com/mockups/7steps/library/OFPPguide-bp.pdf> (accessed June 2006).

contractual issues requiring the approval of the contracting officer have been submitted and approved, requests for payment have been submitted, reviewed, approved, and processed, etc.) and that contractual and administrative issues in dispute have been addressed and settled in accordance with good administrative practice and sound business judgment.<sup>126</sup>

Finally, good business skills and judgment are required in order to protect the public interest.

Depending on the type of contract, there will be different contract management actions as well as documentation required to support the administration. For example, supply contracts have different specific administrative actions than do construction contracts, and fixed price contracts are administered differently than cost-reimbursement contracts. The FAR part 42.302 has a general listing of contract administration functions that are considered standard.

There are numerous benefits that can be achieved by properly conducting the contract management function. Some areas which may need to be addressed include the following:

**Contract Interpretations:** the process of determining what the parties agreed to in the contract. A written contract document is the primary evidence of the parties' agreement in virtually all cases involving government contract interpretation controversies. The process involves determining the meaning of words, supplying missing terms and filling gaps, resolving ambiguities. The cardinal rule of contract interpretation is to carry out the original intent of the parties. Interpret contract language in the way it would be interpreted by a reasonably intelligent person familiar with the facts and circumstances surrounding contract formation.

**The post award orientation (conference):** Can be mutually beneficial to both parties because it is essentially a tool used to help both parties achieve a clear and shared understanding of the requirements of the contract. Further, it helps the contractor understand the roles and responsibility of the government officials who will administer the contract, and reduces future problems. It can be considered a risk management tool.

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<sup>126</sup> Office of Federal Procurement Policy.

**Contract surveillance** - is a key task in contract management. Ensures that supplies, services being purchased conform to quality, quantity and other requirements specified in the contract.

**Performance measurement** - measures actual achievements against a detailed performance plan. Predict final cost and schedule results of the project and helps to be able to take proactive actions to improve situation.

**EVMS** – earned value management system identify variances from the plan. Do not allow contractors to borrow budget money from down stream activities; Requires a report on contractor's past performance if it has a contract over \$100K

**Inspection** – Government has the right to inspect contractor's work at any place and time providing it does not usually delay the contractor's performance. The government usually relies on the contractor's quality process. However, the contractors have an obligation to inspect goods or services prior acceptance.

**Acceptance** - an act by an authorized representative of the Government assuming ownership of existing supplies tendered or approving specific services as partial or complete performance. This act is conclusive under FPC except in cases of latent defects, fraud, etc.

**Contract changes** - the changes of the terms and conditions of the contract. There are usually two types, unilateral and bilateral. **Unilateral** changes are based on sovereign powers of the Government and should be in the best interest of the public. Unilateral administrative changes are used to correct errors or omissions, etc. Contract Change Order is a written or signed change to the contract by CO which directed the contractor to make a change without the contractor's consent. Contractor is entitled to equitable adjustment. **Bilateral** changes are signed by both parties.

**Terminations: For default** - based on contractor's failure to meet requirements of contract: to deliver on time, unwillingness to perform. The Government is not liable for contractor's costs on undelivered work and is entitled to the repayments of advance and progress payments of undelivered work. The contractor may be liable for re-procurement costs and actual or liquidated damages; a ten day written cure notice is mandatory. **Termination for convenience of the Government** is used when completion of contract is not practical or economical, contract was

erroneously terminated for default or there was improper award. Limit the contractor's recovery to cost incurred, profit on work completed, and the cost of preparing the termination settlement proposal.

**Dispute:** Is defined as disagreement between the contractor and CO regarding the rights of the parties under the contract. The contractor has legal duty to proceed diligently and comply with direction of CO even if he considers that to be a material breach of the contract. Issues can be solved through negotiated agreement between CO and contractor through the Board of Contract Appeals or U.S. Claims Court utilizing Alternative Dispute Resolution (ADR) which is any procedure voluntarily used in lieu of litigation to resolve issues in controversy; this including but not limited to mediation, arbitration.<sup>127</sup>

Additionally, sound contract management requires the cooperation and coordination of several key activities and government representatives. They are listed as follows:

- **Procuring contracting officer (CO):** may designate a contract administration office to administer the contract.
- **Administrative contracting officer:** appointed by CO for everyday administrative tasks; usually assigned to Defense Contract Management Agency; FAR designated 65 functions that are usually performed by ACO.
- **Contracting Officer Technical Representative (COTR):** performs contract administration tasks as they pertain to technical matters; provide technical guidance to a contractor on issues that fall within the scope of the contract; performs inspection function; approves testing; conducts surveillance of contractors work; Authority vested in COTR comes from CO and is contained in the letter of destination
- **Corporate Administrative Contracting Officer (CACO):** may be assigned to deal corporate management and perform selected contract administration functions on a corporate -wide basis.
- **Defense contracting auditing agency (DCAA):** works for DoD Comptroller and is mainly responsible for contract auditing. However, additional responsibilities includes: financial advisory in connection with administering and settling contracts and subcontracts; Submitting information and recommendation on the acceptability of contractors incurred and estimated cost; reviewing financial and accounting aspects of

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<sup>127</sup> A Guide to Best Practices for Contract Administration. OFPP (1994). from <http://www.acqnet.gov/Library/OFPP/BestPractices/BestPCont.html> (accessed June 2006).



contractor's cost control systems; and performing other analysis and review of contractor's records in conjunction with contractor's proposal.

- **Defense Contract Management Agency (DCMA):** a separate DoD agency that accomplishes all actions in or near contractor's plants; supports buying offices, systems and program managers.
- **Contractor and Subcontractors:** successful contract management is dependent on a good relationship with government during contract performance.<sup>128</sup>

The FAR is the primary source governing rules for contract administration. However, there are other statutes, executive orders and regulations which also provide legal and regulatory guidance. For example, the Uniform Commercial Code (UCC) applies when FAR does not cover a particular situation.

Although most agencies strive for smooth contract management, there have been several weaknesses identified with this phase of the procurement process. Mainly, contract managers are normally preoccupied with other duties, thus management does not receive the emphasis it deserves and contracting officials often allocate more time to awarding contracts rather than administering existing contracts. Consequently, problems such as cost overruns, problems with contractor surveillance and delays in receiving goods and services are often the result of poor contract administration. Additionally, there are weaknesses with untrained personnel, unclear statements of work which might hinder contractor performance, as well as inadequate guidance on voucher processing and contract closeout.<sup>129</sup> These are the Achilles heel of contract management.

#### ***b. Contract Closeout***

Contract closeout is a vital part of contract management. This phase begins when contract has been physically completed. A contract is considered to be physically completed when all deliverable items and services stated in the contract have been delivered and accepted. These deliverable items may consist of a variety of things

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<sup>128</sup> R. Marshall Engelbeck, *Acquisition Management* (Virginia: Management Concepts, Inc., 2002), 327-390.

<sup>129</sup> A Guide to Best Practices for Contract Administration. OFPP (1994). Retrieved April 27, 2006 from <http://www.acqnet.gov/Library/OFPP/BestPractices/BestPCont.html> (accessed June 2006).

such as spare parts, reports, warranty documents, and other items required by the terms and condition of the contract. Thus, the steps that must be completed to close out a contract will depend upon the type and/or nature of the contract.

The purpose of contract closeout is to ensure that all outstanding contractual issues have been settled and that each party has met its entire obligation; files should be documented accordingly. A contract is not complete and ready for closeout until the contractor complies with all the terms of the contract. This includes those administrative actions that are contractually required, i.e. property, security, patents and royalties. Further, closeout is completed when all administrative actions have been completed, all disputes settled, and final payment has been made.

The level of effort required for contract closeout will be determined by the type of contract, complexity and the type of product or services procured. The closeout of routine purchase orders and contracts for commodities and other commercial products is usually a rather straightforward and uncomplicated process. These contracts are considered closed once there is documentation of product receipt, inspection, and acceptance and that full payment has been made. On the other hand, the closeout of contracts for personal services, complex equipment, construction, large cost reimbursement contract (i.e. research and development) and other unique items will require a more rigorous closeout procedure. Consequently, there is no “one size fit all” because there is a vast range of contract types and products procured. Thus contract closeout is often viewed as drill in reviewing and documenting the completion of all contract requirements.<sup>130</sup>

The ACO is usually the individual responsible for the closeout process. They primarily focuses on coordinating personnel of the various agencies involved in the acquisition process, such as Defense Contract Management Agency (DCMA), Defense Finance and Accounting Service (DFAS) or the appropriate payment office, the buying activity, DCAA (or other audit agencies), the contractor, and as necessary, the Office of Counsel, Defense Criminal Investigative Service (DCIS), Inspector General (IG) and the

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<sup>130</sup> Federal Transit Administration, “Best Practices Procurement Manual,” May 29, 2002, <http://www.fta.dot.gov/library/admin/BPPM/toc.html> (accessed June 2006).

Department of Justice in closing contracts. FAR part 4.804-1(a) provides guidance on the closeout process. For Quick Closeout procedures, refer to FAR 42.708.

A solid contract closeout program is usually developed based on the objectives of the agency. Additionally, practicing good office management may mitigate backlog of contracts awaiting closeout. Setting up periodic timeframes for review and closeout the files of completed contracts may also assist in mitigating the challenges related to backlog. There are many factors which contribute to poor contract closeout programs such as: missing final invoices, untimely submission of indirect rate proposals, the lack of prioritization within organization, and shortage of resources – most notably manpower. Thus, contract closeout requires management attention, a robust management information system to monitor the contract closeout process and continuous coordination between key players. The concerns listed above seem to be a constant source of challenge relating to the contract closeout process. However, it cannot be overstated that contract closeout is a very important aspect of contract management.<sup>131</sup>

## **E. SUMMARY**

After analysis of the significant phases in the acquisition processes of Lithuanian and the U.S., several similarities and differences between the two countries' procurement processes become evident. This summary reviews the similarities and differences in the processes discussed in this chapter. The processes are compared utilizing the same schema used to describe the operation of the two systems, and the discussion is organized by each phase of the acquisition process.

### **1. Requirement Determination/Acquisition Planning**

In both Lithuania and the U.S., requirements determination is generated from similar basis such as the country's security strategies (normally determined by the type of threats). In addition, both countries tend to follow some same steps in the requirements determination process (identification of needs, determination of operational requirements and preparation of technical specifications). However, some steps in the process may be less robust in Lithuania. For example, one of the major differences is the way market

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<sup>131</sup> A Guide to Best Practices for Contract Administration. OFPP (1994).  
<http://www.acqnet.gov/Library/OFPP/BestPractices/BestPCont.html> (accessed June 2006).

research and analyses of alternatives are conducted. In the U.S., market research and analysis of alternatives is a more in-depth and structured process, while in Lithuania this step is not approached or conducted with the same tenacity. Additionally, Lithuania's specifications are more of a "design" type, while the U.S. tries to avoid such specifications to the maximum extent possible. The use of functional and performance-based specifications is more prevalent and more desirable.

Acquisition planning is also different within the two acquisition systems. This phase is more robust, comprehensive, structured, well developed and complex in the U.S., while Lithuania's process is still evolving.

## **2. Solicitation/Source Section/Contract Award**

One difference noted in the solicitation processes is the absence of a contracting officer position and title in the Lithuanian acquisition system. In Lithuania, a procurement commission is assigned to execute contracting procedures and functions.

Although both countries have similar practices in their solicitation procedures, some differences do exist. For example, one of the differences noted was the requirement in Lithuania to publicize all procurement actions to the EU via the Official Journal (except those, like weapons and munitions, excluded from the Law of Public Procurement). However, in the U.S., publicity for solicitations does not have to extend beyond national borders.

The process for determining responsiveness and responsibility are very similar in the source selection process. Both Lithuania and the U.S. have to make a determination of the responsibility of the suppliers as well the responsiveness of each proposal. Further, in both countries the legal criteria for selecting the source are the same, e.g., lowest price or best value (most advantageous tender). However, the practice of source selection is somewhat different.

For the purpose of maintaining a broad view, four major differences are described. First, the level of discretion given to U.S. contracting officials is much higher; they are encouraged to be innovative, creative, and to use their best business judgment when making source selection decision. In contrast, this rule does not apply to

Lithuanian procurement commissions. Secondly, in Lithuania a company's past performance is not considered in the selection process. But it is often used as an evaluation factor in the U.S. source selection process. Third, in terms of source selection criteria, Lithuania's dominant criteria is the lowest price, while the U.S. primarily focuses on trade-offs. Lastly, Lithuania conducts price analysis for determination for price reasonableness and fairness, while in the U.S., depending on the method of source selection, cost analysis predominates.

### **3. Contract Management/Contract Closeout**

Contract management is more complex in the U.S. than in Lithuania. For example, the U.S. has government employees working in contractor plants and when applicable, they conduct audits of Cost Accounting practices within companies. Additionally, the level of discretion given to contracting personnel differs. An illustration of this difference is captured in the approach to the modification of contracts. In Lithuania, after contract award, modifications are not allowed. In contrast, in the U.S., modifications are often used when there is a need to adjust the terms of a contract to reflect changes in the requirements situation.

### **4. Reasons Why Differences Exists between Two Countries Acquisition Processes**

There are several possible reasons for the differences between the two acquisition systems, including the age and maturity of the individual acquisition systems, the size of the budgets and expenditures, and the complexity of the objects acquired.

In terms of maturity, Lithuania's acquisition system really began to evolve in 1992 with the first regulation on procurement. Prior to independence, Lithuania was under the control of the Soviet Union, which practiced a state planned economy. On the other hand, the U.S. acquisition system is more than 200 years old; the first major legislation was the Purveyor of Supplies Act (1795).

There is a huge disproportion between the two countries' defense budgets. Lithuania's defense budget for fiscal year (FY) 2006 was approximately \$340 million,

which was 1.27 percent of the country's GDP.<sup>132</sup> The U.S. defense budget for FY 2006 was \$410.8 billion, approximately 3.7 percent of the GDP.<sup>133</sup> This does not include supplementals; with supplementals most experts figure the total is more than \$510 billion.

In terms of expenditures, there are also differences in the distribution of each country's defense budget. From Figures 4 and 5, it is evident that Lithuania spends more on personnel (49.8 percent) while the U.S. DoD expenditure for personnel is only 42 percent. The U.S. allocates approximately one percent of DoD's budget to family housing, while Lithuania does not include this category in its defense budget. Additionally, the U.S. invests much more in research and development than Lithuania. This may be a factor contributing to the U.S. position on the cutting edge of technology.

Another difference between the two countries is the complexity of items routinely acquired. For example, the U.S. DoD is consistently concerned about providing technologically superior weapons and equipment to the war fighter. On the other hand, Lithuania mainly purchases from overseas sources defense systems that are already developed and tested; these items are also less complex.

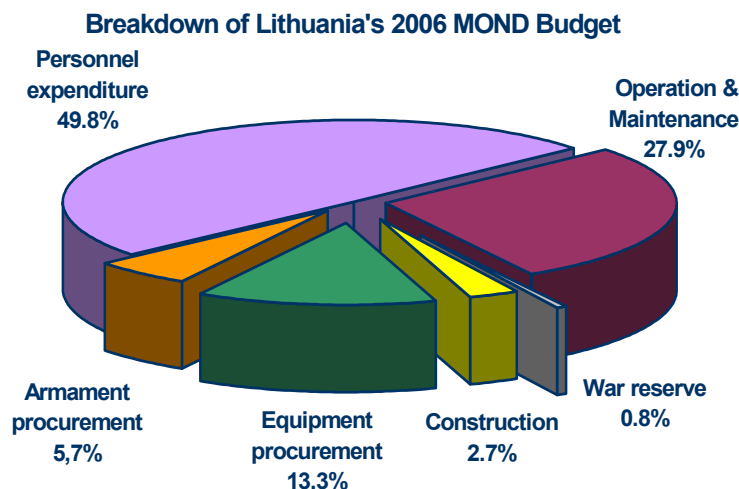


Figure 4. Lithuania FY 2006 MoND Budget<sup>134</sup>

<sup>132</sup> MoND Resources and Programmes Department, 2006, Slides.

<sup>133</sup> Jim Garamone, "DoD 2007 Budget Proposal Matches 1995 GDP Percentage," Department of Defense, [http://www.defenselink.mil/news/Mar2006/20060302\\_4372.html](http://www.defenselink.mil/news/Mar2006/20060302_4372.html) (accessed May 2006).

<sup>134</sup> MoND of the Republic of Lithuania, Resources and Programmes Department, 2006, Slides.

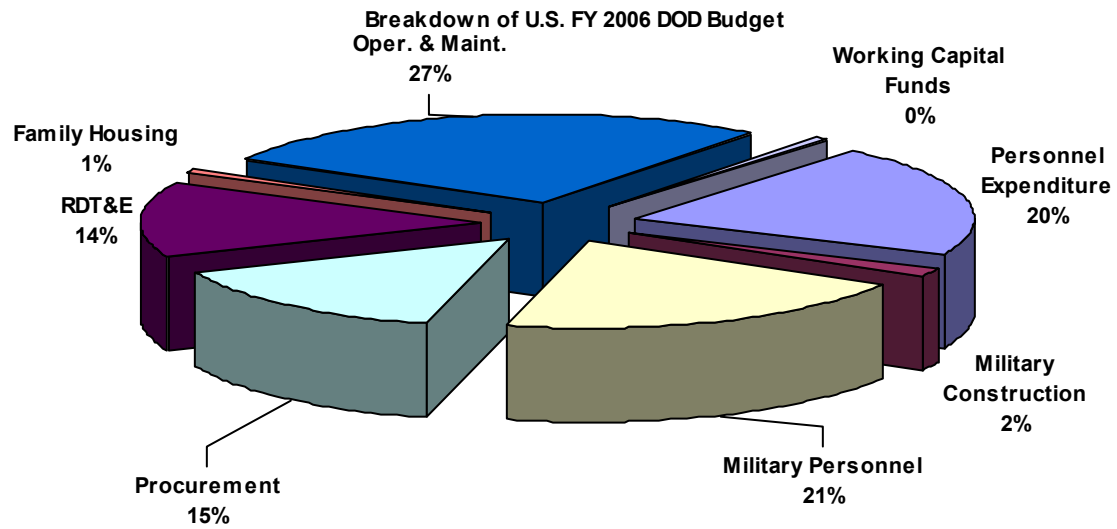


Figure 5. U.S. FY 2006 Budget.<sup>135</sup>

<sup>135</sup> “President Bush Fiscal Year 2006 Defense Budget,” Department of Defense, <http://www.dod.mil/news/Feb2005/d20050207budget.pdf> (accessed May 2006).

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## **IV. CONCLUSION AND RECOMMENDATIONS**

### **A. INTRODUCTION**

The primary research question is: “Based on the defense acquisition process “best practices” of each country, what can Lithuania and the U.S. learn from each other?” To answer that question the researchers conducted a macro level comparison of the acquisition systems of Lithuania and the U.S. In presenting the findings, first, the summary of the macro level research is provided to answer the supporting questions, after which the primary research question is addressed in the form of recommendations for improving the acquisition processes of both countries.

### **B. ANSWERS TO RESEARCH QUESTIONS**

#### **1. Political, Legal, Economic and Social Influences**

What political, legal, economic and social influences shape the defense acquisition processes?

Chapter II of this project provided an analysis of the political, legal, economic and social factors which influence each country’s acquisition process.

Lithuania and the U.S. acquisition systems are both impacted in a similar manner by their political and legal systems; their acquisition systems function in democratic legal frameworks and are affected by mechanisms for checks and balances. For instance, the legislative branches of both countries primarily influence the acquisitions through procurement policies and regulations as well as by approving financial resources of programs leading to procurement. In addition, the legislative branches each have “watchdog” agencies (GAO in the U.S. and National Audit Office in Lithuania) which audit and provide oversight of programs to ensure that taxpayer money is spent responsibly. The executive branches in both countries are responsible for supplementing statutory acquisition policies and procedures, political and managerial decisions relevant to acquisition programs, administrative oversight, and political interference such as appointing government officials who control procurement issues. The judicial branches

in both countries are not directly involved in setting acquisition policies; however, they are responsible for trying all legal cases such as contract disputes.

Despite these similarities there are also differences that set the two countries apart. One notable difference is that U.S. governmental institutions have much more discretionary power, while Lithuania must adhere to and operate strictly under the public procurement policies set by the European Union.

The socioeconomic factors present the most significant differences between the two countries' acquisition environments. For example, the U.S. defense industry is one of the most modern and robust industries in the world. On the other hand, Lithuania's defense industry is not well developed, so Lithuania imports the majority of its defense systems from abroad. Additionally, the perception of corruption is much higher in Lithuania than in the U.S. When compared with the Lithuanian population, the American people demonstrated a stronger belief in the integrity of their system, as demonstrated in a 2005 survey conducted by Transparency International which showed the corruption perception index of the U.S. as 7.6, much closer to "squeaky clean" than Lithuania's score of 4.8.<sup>136</sup>

The similarities and differences between the two countries' legal, political, social and economic environments described in the above paragraph will all be considered while presenting the recommendations for both countries.

## **2. Objectives and Principles**

What are the objectives of each country's defense acquisition process? Chapter II compares the objectives and principles of the two acquisition processes. These are not repeated here; instead the question is answered by listing similarities and differences. The most significant similarities are:

- Customer satisfaction is the first priority of both systems.
- Both countries seek to promote competition.

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<sup>136</sup> "2005 Transparency International Corruption Perceptions Index," Pearson Education, <http://www.infoplease.com/ipa/A0781359.html> (accessed December 2005).

- Both strive to conduct acquisition in a manner that promotes public trust by focusing on performing business with integrity, fairness, and openness.
- Both seek to make rational use of allocated public resources.

Significant differences are:

- The socioeconomic objectives are not the same in the two countries. The following are example:
  - In the U.S. there is a requirement to consider small, small disadvantaged and minority-owned business when awarding contracts. However, these particular objectives are not applicable in Lithuania.
  - Preferences are given to domestic firms only in the U.S. On the contrary, giving preferences to national suppliers is against the Law on Public Procurement in Lithuania.
  - In Lithuania there is a requirement for offsets when procuring all armaments, ammunition, explosives and other defense related supplies' in excess of five million Litas. While in the U.S. there is no specific offset policy.
- Lithuania has a goal of compliance with European Union directives and policies on public procurement.
- The U.S. goal is to maximize the use of commercial products and services. This is not an issue in Lithuania because majority of the products procured are commercial items.
- The U.S. uses past performance as a tool for selecting competent contractors when making contract award decisions. This is not a factor in Lithuania's source selection process.
- Best value continuum is emphasized in the U.S. but not in Lithuania.
- In the U.S., minimizing administrative costs is explicitly expressed as a goal in the FAR; conversely this objective is implied in Lithuania.
- In the U.S., acquisition professionals and participants in the acquisition process aim to work together as a team.

What are the principles of each country's defense acquisition process? Lithuania and the U.S. have rather dissimilar acquisition principles. For example, the U.S. FAR encourages acquisition personnel to apply the principle of entrepreneurialism (making innovative and creative business judgments), while in Lithuania acquisition personnel can do only what is precisely permitted by law.

### **3. Similarities and Differences, As Well as Strengths and Limitations of the Lithuanian and U.S. Acquisition Processes**

What are the similarities and differences, as well as strengths and limitations of the Lithuanian and U.S. acquisition processes? This question is addressed in Chapter III, which compares requirement determination, acquisition planning, solicitation, source selection, award, contract management and contract closeout phases of the acquisition process. The chapter presents various similarities and differences as well as strengths and weaknesses of the different stages in the process. The similarities and differences are presented in the following paragraphs. While the strengths and weaknesses are discussed further in the section on recommendations.

#### ***a. Similarities***

- In both Lithuania and the U.S., requirements determination is established from a similar basis, such as threats and strategies. In addition, both countries tend to follow some of the same steps in the requirements determination process (i.e. identification of needs, determination of operational requirements and preparation of technical specifications).
- In the solicitation phase, the most frequently used procedures in both countries are sealed bidding (referred to as open procedures in Lithuania) and negotiations.
- In the source selection phase, both Lithuania and the U.S. must make a determination regarding the responsibility of the bidders as well the responsiveness of each proposal. Further, in both countries the legal criteria for selecting the source are the same, for example, lowest price or best value (most advantageous tender).
- Some of the tasks involved in contract management are similar in both countries. For example, functions such as inspections, testing, acceptance, schedule control, payments, solving of disputes and termination of the contract are part of contract management.

#### ***b. Differences***

- In the requirements determination phase, there are some steps of the process which may not be as robust in Lithuania as in the U.S. For example, one of the major differences noted was in conducting market research and analyses of alternatives. This step is a more depth and structured process in the U.S. while in Lithuania this is not approached or conducted with the same tenacity. Additionally, Lithuania's specifications are more of a "design" type while the U.S. tries to avoid such specifications to the maximum extent possible. Functional and performance based specifications are more prevalent and more desirable.

- Acquisition planning is also different within the two acquisition systems. This phase is more robust, comprehensive, structured, well developed and complex in the U.S., while on the other hand, Lithuanian's process is still evolving.
- In the U.S., publicizing solicitations does not have to extend beyond the borders of the U.S. While in Lithuania solicitations of certain types of contracts are required to be publicized throughout the E.U.
- The practice of source selection differs to some extent in the two countries. In Lithuania a company's past performance is not considered in the selection process; it is an important factor in the U.S. source selection process. In terms of source selection criteria, Lithuania's dominant criterion is the lowest price, while the U.S. primarily focuses on tradeoffs.
- The major difference in the contract award process of the two countries is that the U.S. has a more structured and more formalized process.
- Contract management is more complex in the U.S. than in Lithuania. For example, the U.S. has government employees working in contractor plants as well as conducting auditing of Cost Accounting practices within companies when applicable.
- In terms of the participants in the acquisition process, the most significant structural difference noted is the absence of a contracting officer position and title in the Lithuanian acquisition system. In Lithuania, a procurement commission is assigned to execute contracting procedures.

### C. CONCLUSION

Theoretically, certain elements or concepts are desired of an acquisition system is to be considered effective and efficient. These are summarized in the table below.

Legal Framework	Based on procurement law that defines responsibility of procuring entities, suppliers, and oversight agencies
Policy	Consistent, national policies and standards to be followed by all procurement entities including bid challenge and dispute settlement procedures.
Institutional Setup	Define structures for conducting and supervising procurement that minimize subjective decisions and politicization.
Procurement Professionals (Civil & Military Service)	Procuring entities staffed with procurement professionals, trained and recognized as such under civil service or military regulations.
Resources	Procuring entities supported with adequate budget, standard documents, and operational manuals.
Anti-corruption	Clear laws applicable to procurement officials and suppliers that increase transparency, encourage inclusion of civil society, and punish wrong doing.

Table 4. Components of an Effective Public Procurement System<sup>137</sup>

<sup>137</sup> Robert Rothery, "China's Legal Framework for Public Procurement," *Journal of Public Procurement*, 3(3): 377.

Based on the research, both Lithuania and the U.S. have the elements needed for an adequate acquisition system. The legal frameworks in both countries provide guidance and regulations for conducting acquisition functions. Within this framework, responsibilities of procuring and oversight agencies as well as suppliers are also defined. This also includes policies which are formulated and defined based on the objectives that the acquisition systems strive to achieve. Embedded within each of the acquisition systems are institutional setup, procurement professionals, resources, and anti-corruption laws. Although these elements exist, they are not ideal—there is always room for growth and progress. Suggested areas for growth and revision are provided in the following recommendation section.

#### **D. RECOMMENDATIONS**

In describing the different phases of the acquisition process in Chapter III, some of the weaknesses of these phases were also discussed. These weaknesses are the basis for the researchers' recommendations. (Given the scope of this project, steps for implementation are not discussed; these are areas for future research).

Lithuania is in a position to learn from the money saving initiatives as well the costly mistakes of the U.S. The following are recommendations for Lithuania's acquisition system:

- **Entrepreneurship:** MoND should initiate the effort to transform the acquisition system from a risk avoidance attitude to an entrepreneurship-based approach. Currently, the strict interpretation and enforcement of the Law on Public procurement restricts the use of potentially prudent business strategies, promotes unreasonable risk aversion, thwarts flexibility and suppresses innovation and process improvement. Thus, the Law on Public Procurement and other relevant regulations should be amended to foster innovation, flexibility, and practical risk taking. For example, if a specific procurement action is in the best interest of the Lithuanian government and it is not prohibited by law, then it should be considered as permissible.
- **Requirement determination:** The requirements determination process is not very clearly structured or defined; there are vague decision authorities and inconsistent steps in the process. Using the U.S. *Integrated Defense Acquisition, Technology and Logistics Life Cycle Management Framework* as a reference to develop a guidebook or pictorial roadmap would provide some clarification and structure to the Lithuanian process.

This could be instrumental in describing the key steps in the process, who should be decision authorities, in what phases milestone decisions are required, and the responsibilities of each player involved. Basically the questions who, what, where, and when should be addressed and clearly defined. Additionally, emphasis should be placed on two key steps: market research and analysis of alternatives.

- **Technical specifications:** The most frequently used specification by MoND is design description. However, switching to functional or performance-based specifications would encourage creativity and innovation from industry. Challenges often encountered in the preparation of quality technical specifications include lack of qualified personnel, as those assigned to prepare technical specification usually have other full-time job responsibilities and technical specification is not top priority in their schedule. To solve this problem, two options might be explored. First, MoND could explore the option of outsourcing these functions when there are inadequate internal capabilities. Second, the issue could also be resolved by investing in human resource capital such as training programs or hiring personnel with the appropriate technical expertise.
- **Acquisition plan and procurement strategy:** The planning process of the Lithuanian acquisition system is still evolving. The template of the acquisition plan used in the U.S. might be instrumental in providing a framework for planning the technical, legal, fiscal, and policy aspects of a project.
- **Procurement commission:** The integrated approach to procurement management allows for the concentration of resources from a diverse knowledge pools in different fields. Although this is an advantage of the system, the decision making aspect of the commission is somewhat flawed, thereby restricting positive gains. It is not prudent for members of the commission to vote on issues outside their area of expertise. (For example, an engineer should not vote on legal or financial issues.) Members of the commission should give recommendations only on issues within their fields of expertise.
- **Life cycle cost:** Award decisions are made based on procurement cost versus total ownership cost. Developing a methodology to calculate total ownership cost which emulates the one used in the U.S. would be beneficial.
- **Source selection** Contracts are frequently awarded to the lowest price rather than to the most economically advantageous tender. Shifting the trend towards the process of tradeoffs as used in the U.S. for evaluation may be more effective in source selection.

- **Contract management:** Oversight of the contractor's management of quality assurance processes is often viewed as the weakest link in the process. Occasionally supplies and services are accepted even though they do not meet the specifications and requirements of the contract. Hiring experts in contract management, oversight, testing and inspection to provide functions similar to that of Defense Contract Management Agency might mitigate that issue. Also, outsourcing is an option to consider.

What can the U.S. learn from Lithuania's acquisition system? Because the U.S. acquisition is complex, multi-faceted and very mature; (it has been in existence for over 200 years), implementing changes is not always an easy feat. While Lithuania's acquisition system operates on a much smaller scale than the U.S., their system allows for quicker implementation of changes. Although it has only been fifteen years since the actual birth of the Lithuanian acquisition system the country has made significant progress in achieving what is today a workable system. Thus it might be beneficial for the U.S. to learn from the manner in which reforms are managed and implemented to improve Lithuanian acquisition process.

While conducting the research to compare the two acquisition processes, the researchers benefited significantly both personally and professionally. This research project was mutually advantageous to both of the researchers in that both were able to (a) gain a deeper understanding of the rules and regulations and (b) profited by adding to their understanding of the reasons behind the variances between the two processes. It is evident that while looking into another system, one can illuminate their own.

#### **E. AREAS FOR FUTURE RESEARCH**

This research project provides a broad overview of the defense acquisition processes of Lithuania and the U.S. Only a brief review of each step in the acquisition process was presented. All phases of the defense acquisition process could be researched in greater depth than allowed by the scope of this project. Although not specifically discussed in this research, potential implementation of a U.S. government purchasing card program, as well as e-procurement procedures, might be of interest for Lithuania and therefore may also be areas to consider for future research.



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